

**Environmental Justice for All**  
**A Fifty State Survey of Legislation, Policies and Cases**  
*Third Edition*

Written in association with the American Bar Association's Sections on Individual Rights and Responsibilities and the Environment and Natural Resources



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*Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases (Third Edition)*  
Steven Bonorris, Editor

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You may obtain an electronically retrievable copy (PDF file) of this report, at no cost, from the website of the Environmental Justice Committee of the Section of Individual Rights and Responsibilities, American Bar Association <[www.abanet.org/irr/committees/environmental/](http://www.abanet.org/irr/committees/environmental/)> or from the Public Law Research Institute <<http://www.uchastings.edu/?pid=1353>>.

## Preface

This Report is PLRI's third comprehensive survey of the laws, policies and practices under which Environmental Justice (EJ) is promoted. "Environmental justice" is commonly understood to stand for the principle that all people have the right to clean air, clean water, and clean land, and that those potentially affected by environmental decisions should have a meaningful say in the decisionmaking process regardless of race, income, or ethnicity.

*Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases* aims to assist the public, industry, environmental advocates, and state environmental regulators in understanding the diversity of EJ practices in the 50 states and the District of Columbia. It is hoped, as well, that this report can assist states as they consider the adoption and modification of EJ policies. For further updates to this report, as well as links to online EJ resources, go to [www.uchastings.edu/cs/gl](http://www.uchastings.edu/cs/gl), including the recent PLRI/ABA report on state Supplemental Environmental Projects, which have a strong capability for furthering EJ aims during the negotiation of settlements for violations of environmental laws.

This report is the third major study produced under a partnership between the American Bar Association and the University of California, Hastings College of the Law. The goal of the partnership is to: (1) foster scholarship and leadership in the next generation of environmental attorneys; (2) increase the diversity of the environmental bar; and (3) be a resource for those in communities, industry, academia, the private bar and government at all levels who are seeking to address issues of environmental justice. Recognizing the special needs of environmentally impacted communities, which are often in the greatest need of assistance and least able to afford expert advisors, we are making this report available at no cost. If you have suggestions for future projects please contact us at [ej4all@email.uchastings.edu](mailto:ej4all@email.uchastings.edu).

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## Introduction<sup>1</sup>

Beginning with New Hampshire's pioneering EJ policy in 1993, at least thirty-two states and the District of Columbia have adopted formal environmental justice statutes, executive orders, or policies.<sup>2</sup> In addition, ten additional states either employ full-time environmental justice officers or personnel, or have active EJ programs. Viewed collectively, the efforts of these forty-one states demonstrate significant and increased attention to the issue of environmental justice at the level of state government.

This report sets out the various approaches of the fifty states and the District of Columbia in advancing Environmental Justice. The 50 "laboratories of democracy" have developed a broad array of legal authorities to address the issue of environmental justice (or environmental equity, as the issue is sometimes termed), including legislation, executive orders, and policies.<sup>3</sup> It also synthesizes state court and administrative law judge opinions that implicate environmental justice concerns, either directly or indirectly, with an emphasis on cases decided since 1999. Where possible, we have included noteworthy state programs, grants and initiatives. In addition, the frontpiece to the survey sets out recent trends in the legislatures, executive branches and judiciaries of the states.

Authorities and programs explicitly referring to "environmental justice" or "environmental equity" constitute the bulk of this report; however, selected state authorities that address environmental justice issues, but which do not expressly reference the term, have also been included. For example, the report sets out a description of Alabama's anti-concentration law, which restricts the building of solid or hazardous waste facilities within a county already housing such a facility. Similarly, the report includes authorities that address cumulative impacts in the siting of new waste or power facilities, as well as authorities that enhance community participation in decisionmaking with regard to risky facilities.

The report also includes the U.S. Environmental Protection Agency-State Performance Partnership Agreements ("PPAs"). These Federal-State coordination documents typically address environmental justice issues, but have no legal effect on private entities. Federal policies or practices, however, are not included generally, unless a state expressly references federal EJ policy or Title VI.

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<sup>1</sup> A condensed version of this survey appears in *THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS* (Michael B. Gerrard, ed., forthcoming 2007).

<sup>2</sup> Eleven states have no formal environmental justice authorities or programs are Idaho, Iowa, Kansas, Michigan, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Utah, and Wisconsin, although Idaho has recently begun soliciting community input into its decisionmaking process, and Nebraska has initiated outreach efforts to communities of color and poverty. Michigan has an EJ coordinator for the state environmental protection agency.

<sup>3</sup> The Public Law Research Institute has been following the environmental justice efforts of the fifty states since 2000: it maintains an Environmental Justice website at <http://www.uchastings.edu/?pid=1353>. Its first EJ report was produced at the behest of the California Governor's Office of Planning and Research, under the leadership of Heather Halsey, EJ Coordinator, and later, OPR's Sandra Salazar-Thompson, Director of Environmental Justice, and Bonnie Chiu, EJ Coordinator. The 2000 survey, *Environmental Justice: A Review of State Responses*, is available at [http://www.uchastings.edu/site\\_files/envirojustice.pdf](http://www.uchastings.edu/site_files/envirojustice.pdf). Produced in association with the ABA's Environmental Justice Committee, the 2004 follow-up, *Environmental Justice for All: A Fifty-State Survey of Legislation, Policies and Initiatives*, is available on the ABA's website at <http://www.abanet.org/irr/committees/environmental/statestudy.pdf>.

At a minimum, we (1) visited the website of each state's environmental protection agency; (2) canvassed the Lexis/Nexis databases, including both primary and secondary sources; and (3) most significantly, engaged in phone interviews with personnel in state environmental agencies. A draft of the relevant section of this report was circulated to the environmental agencies reported upon in order to ensure comprehensiveness and accuracy. The authors are very grateful to all the state reviewers and interview subjects; without their cooperation and efforts this report would have failed in its aim of providing the reader with an accurate snapshot of the state of EJ circa 2007.

We would like to extend our deepest thanks to Nicholas Targ and Benjamin Wilson, co-chairs of the Special Committee on Environmental Justice, Section of Environment, Energy, and Resources, the American Bar Association, without whose leadership this project would have been impossible. We would also like to thank the assiduous team of student researchers that responsible for the research into the environmental justice authorities and initiatives of the fifty states. Chelsea Holloway (Hastings '05) and Annie Lo ('05) served as editors and tirelessly managed the efforts of the student team — Maya Gesund ('07), Jason Campbell ('07), Kris Boney ('06), Nick Gustafsson ('06) and Nic Pullin ('06) — which spent countless hours on the phone and on the Internet to ferret out the latest information. Jodene Isaacs ('03), Stephanie Stuart ('03), John Yun ('04), Paul Tokarz ('04), Caitlin Crary ('04), Hillary Gross ('01), Hannah Shafsky ('01), and the former Fellow in Public Law at UC Hastings, Kara Brown, all contributed material that had been published in prior surveys. We also recognize the generous financial support of Interactive Sciences, Incorporated, of Palo Alto, California, which helped make this survey possible. And, the roster of benefactors would not be complete without acknowledging our generous grantor, Jeff Levinsky of Interactive Sciences, Inc. of Palo Alto, California.

The bulk of the research was completed and verified in late 2006, although states with pending legislation or policies were updated in 2007, in advance of publication. Please check our Environmental Justice web page for access to all of PLRI's work on EJ, as well as updates on recent state actions on environmental justice: <http://www.uchastings.edu/?pid=1353>. And while this document is meant to provide background information on EJ law and cases, practitioners and others should not rely on the material in this report to the exclusion of their own research, judgment and legal counsel.

Steven Bonorris, Project Manager  
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April 12, 2007

## Trends

In recent years, the states have broken new ground in developing EJ authorities in the attempt to address environmental justice concerns. The states' approaches vary along multiple dimensions:

- ❑ Duration: ad hoc, subject to change in administration, or permanent;
- ❑ Government branch: judicial, legislative, or executive (*in toto*, or solely the environmental protection agency);
- ❑ Factual predicates: pollutants (anti-concentration laws), media or demographics (procedural/substantive goals for communities meeting geographical or demographic criteria);
- ❑ Institutional reach: dedicated EJ personnel, offices, community advisory boards or functions;
- ❑ Breadth: permitting/siting process, or general applicability affecting all environmental decisions, or most broadly, all decisions within the state government;
- ❑ State/local relations: exclusively matters of statewide concern, or matters of local land use planning;
- ❑ Remedies: causes of action, administrative petitions, heightened public participation; and
- ❑ Mini-NEPAs: consideration of environmental permitted, required or proscribed.

There have been a number of noteworthy developments in the various branches of state government, summarized below:

### *Legislative*

State legislatures have furthered the aims of environmental justice, particularly so in recent years. California is the pre-eminent example of the “comprehensive approach” to environmental justice, defined by US EPA in 1995 as including partnership, the leveraging of resources and coordination, as well as “the early involvement of affected communities and other stakeholders,” with a premium placed on tapping the expertise of community members throughout the process.<sup>4</sup> Another commentator has posited that in the context of state agencies, the comprehensive approach includes “a broad directive to address the issue of environmental justice in all programs, policies or activities.”<sup>5</sup> California’s watershed 1999 legislation mandated inter-agency coordination, an inter-agency working group, and a solicitude for EJ concerns across the broad array of state agency actions. Other legislatures are progressing towards the comprehensive approach, albeit with incremental, targeted measures. These states include Delaware (Community Involvement Advisory Council, community-based penalty fund for environmental violations, and the Community Ombudsman coordinator), Rhode Island (effects on EJ communities considered before brownfield remediation is approved) and Hawaii (2005 resolution ordering the study with broad public input of how EJ principles may be integrated into all phases of environmental review).

### *Executive*

On the administrative front, EJ authorities and programs have evolved beyond addressing EJ in the solid waste or siting context, particularly in those states embracing a comprehensive

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<sup>4</sup> U.S. Environmental Protection Agency, *The EPA’s Environmental Justice Strategy* (1995), available at [www.epa.gov/compliance/resources/policies/ej/ej\\_strategy\\_1995.pdf](http://www.epa.gov/compliance/resources/policies/ej/ej_strategy_1995.pdf) (last visited June 22, 2006).

<sup>5</sup> Nicholas Targ, “The States’ Comprehensive Approach to Environmental Justice,” in *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, at 173 (MIT Press, 2005) (D. Pellow, and R. Brulle, eds.).

approach to environmental justice, such as California. An example of this trend would include the creation of standing environmental justice advisory boards (with required community representation), which can serve as clearinghouses for information and lines of communication among different stakeholder groups (*e.g.*, government, communities, industry, and academia). Delaware's Community Involvement Advisory Council and New Jersey's Environmental Justice Advisory Council are but two examples of recently constituted EJ panels.

### *Judicial*

State courts have shown a new willingness to entertain environmental justice claims and related claims. Significantly, courts appear to be recognizing a broader range of impacts in reviewing permits and environmental impact assessments. Recent cases in California and New York indicate that courts are willing to probe socio-economic effects, induced growth, urban infrastructure, and/or community health issues in addition to cumulative impacts, more generally.<sup>6</sup> Further, the Pennsylvania Supreme Court recently upheld regulations and permit terms and conditions requiring certain facility applicants to: (1) undertake a "benefits-burdens" analysis (including social effects); and (2) ensure that the benefits are realized once the facility commences operation, consistent with the permit.<sup>7</sup>

Further, the 2005 *RHINO* decision of the New Mexico Supreme Court highlights the importance of, and scope of allowable, public input in the decisionmaking process-- a solid waste permit was successfully challenged for failure to weigh the effects of the facility on a community's quality of life, among other things.<sup>8</sup> These examples of increased judicial acceptance of environmental justice concerns may provide an impetus for further legislative and administrative action on the state level.

### **Summary**

The proliferation of environmental justice authorities since the second edition of the PLRI/ABA *Environmental Justice for All* (2004) indicates a growing maturation and acceptance of the issue of environmental justice and a broadening of the scope of the issue beyond facility siting and permitting. Moreover, the increased attention from all three branches of government on issues such as cumulative impacts, environmental and human health effects of induced growth, etc. suggests a possible convergence of sustainability issues and environmental justice.

### **Summary Table**

The following table provides a snapshot of state authorities and initiatives, focusing on the most prevalent forms. The table's categories include statutes (with separate columns for laws expressly referencing EJ, as well as those promoting EJ principles, such as anti-concentration laws); executive orders and/or administrative regulations; policies (with columns articulating the agency source and of the policy); dedicated EJ staff; EJ study and finally, the negotiation of a PPA with U.S.

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<sup>6</sup> In 2000, a New York state administrative law judge interpreted New York's environmental impact assessment law as requiring the consideration of environmental justice impacts emanating from a proposed solid waste transfer facility. *Matter of American Marine Rail, LLC*, 2000 N.Y. ENV Lexis 63 (Commissioner's Interim Decision, August 25, 2000); *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184 (Cal. Ct. App. 2004) (requiring impact statement to consider whether approval of two new "supercenters" in proximity to each other would precipitate "urban decay").

<sup>7</sup> *Eagle Environmental, L.P. v. Commonwealth of Pennsylvania*, 884 A.2d 867 (Pa. 2005).

<sup>8</sup> *Colonias Dev. Council v. Rhino Envtl. Svcs., Inc.*, 117 P.3d 939, 948 (2005).

EPA. The limitations of space regrettably precluded the addition of noteworthy categories such as advisory councils. It is hoped that readers can use this graphical array to guide their perusal of the survey, as well see at a glance which forms of EJ initiatives have been widely implemented.



	Statutes		Executive Order / Regulation	Policies			EJ FTE	Study	PPA
	Express	EJ effect*		State	EPA**	Other			
Alabama		Haz. Waste anti-concentration				Trans.			
Alaska						Trans.			
Arizona							yes		
Arkansas		Siting					yes		PPA
California	Yes								
Connecticut					DEP		yes		PPA
Colorado									PPA
Delaware	Yes	Penalty fund					yes		
DC	Yes						yes		
Florida		Brownfields / Health							
Georgia		Anti-concentration				Trans.			PPA
Hawaii	Study/Guidelines					Trans.			
Idaho									
Illinois	Dumping				IEPA				PPA
Indiana				Strat. Plan	IDEM (2006)				old PPA
Iowa									
Kansas									
Kentucky		Hazardous waste							
Louisiana	Yes		EO					study	
Maine									
Maryland	Yes		EO			DoT			PPA
Massachusetts					MEOEA			study	PPA
Michigan							yes	study	
Minnesota					MPCA				PPA
Mississippi		Anti-concentration							
Missouri					DNR				PPA
Montana		Major facilities							PPA

Nebraska									
Nevada									
New Hampshire					DES				PPA
New Jersey			EO						PPA
New Mexico			EO / Regs pending				yes	study	
New York	Brownfields / SEQRA			yes	DEC		yes	study	
North Carolina		Waste and demographics			DENR		yes		
North Dakota									
Ohio		Waste							
Oklahoma									
Oregon			Old EO		Internal				
Pennsylvania					PA DEP		yes	study	PPA
Rhode Island		Remediation			Draft			study	PPA
So. Carolina							yes	study	
South Dakota									PPA
Tennessee							yes		
Texas			Regulation						
Utah									PPA
Vermont									
Virginia		Waste						study	PPA
Washington			Regulation				yes		PPA
West Va.					DEP		yes		
Wisconsin									
Wyoming		Socio- economics in siting							

\* Sets out laws that may further environmental justice principles, although “environmental justice” is not expressly referenced

\*\* Provides the acronym for the state environmental protection agency that issued the policy

## ALABAMA

### **Statute**

#### Hazardous Waste Anti-Concentration Law

Alabama addresses environmental justice concerns through its hazardous waste anti-concentration law, and sets both substantive and procedural requirements for the placement of hazardous waste treatment or disposal facilities. Only one commercial hazardous waste treatment facility or disposal sites may be situated within a county.<sup>9</sup> Commercial hazardous waste treatment or disposal sites may not be situated until the legislature receives and approves a written proposal addressing socioeconomic issues.<sup>10</sup> In considering whether to approve a siting request, legislators must take into account the “social and economic impacts of the proposed facility on the affected community, including changes in property values, community perception, and other costs.”<sup>11</sup> Alabama’s siting law also provides for notice, opportunity for public comment, and the possibility of a public hearing before the issuance of any permit for a hazardous waste treatment, storage or disposal facility.<sup>12</sup>

The anti-concentration laws apply only to commercial hazardous waste sites. Thus, opponents of other undesirable land uses cannot rely upon the statute to challenge other types of projects. However, Alabama law allows residents to file environmental justice-related complaints with the state's seven-member Environmental Management Commission.<sup>13</sup>

### **Executive Order**

The Alabama Commission on Environmental Initiatives (“the Commission”) was formed by executive order.<sup>14</sup> Composed of 63 individuals including two members of community-based environmental justice organizations, the Commission sought to develop “quality options and alternatives that encourage the long-term preservation of Alabama’s natural environment.”<sup>15</sup> After holding numerous public forums on EJ issues, the Commission issued 40 recommendations for addressing EJ for the Governor’s consideration on December 6, 2000.<sup>16</sup>

One recommendation suggested that the Alabama Department of Environmental Management (“ADEM”) research the number of air permits granted in a “spatial area” and assess whether there is a “need to do cumulative emissions permitting for minor source permits in that area.”<sup>17</sup> The Commission also suggested improving community notification prior to reviewing hazardous waste siting permits in order to increase community input in the planning process.<sup>18</sup>

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<sup>9</sup> ALA. CODE § 22-30-5.1(c) (2005).

<sup>10</sup> *Id.* at § 22-30-5.1(c) & (d).

<sup>11</sup> *Id.* at § 22-30-5.1(d)(1).

<sup>12</sup> *Id.* at § 22-30-12(g).

<sup>13</sup> *See generally, id.* § 22-22A-6.

<sup>14</sup> Exec. Order No. 26, Alabama Commission on Environmental Initiatives (April 26, 2000), *available at* <http://www.jsu.edu/depart/epic/executiveorder26.html> (last visited Jan. 24, 2006).

<sup>15</sup> Alabama Commission on Environmental Initiatives, *Report to the Governor* (Jan. 22, 2001), *available at* <http://www.jsu.edu/depart/epic/ACEIreport.htm> (last visited Jan. 24, 2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

## Policy

Alabama is in the process of developing an environmental justice (“EJ”) policy, although the Alabama Department of Environmental Management (“ADEM”) does not currently provide specific environmental justice information on its website. Once the program is created, it will likely be housed within the Public Relations Department and will begin as a policy initiative implemented within various state departments.<sup>19</sup>

### Transportation Planning

The Alabama Department of Transportation (“ALDOT”) has recognized environmental justice as an issue in its Statewide Transportation Plan (“SWTP”), a long-range planning document.<sup>20</sup> The SWTP, published in June 2000, states that ALDOT is “cognizant of and sensitive to the evolving environmental justice guidance, including Executive Order 12,898, which requires that states . . . consider the extent to which low-income and minority populations may be disproportionately impacted by transportation plans and projects.”<sup>21</sup> The document goes on to state that “environmental justice is a relatively new concept in transportation planning and the actions required of the states are still largely undetermined. However, this plan reflects ALDOT’s efforts to begin to address environmental justice in statewide planning.”<sup>22</sup> As of this 2006, there is no other mention of environmental justice issues or implementation of any procedures on ALDOT’s website.

## Cases

### East Central Alabama Alliance for Quality Living (2003)

A quarry permit was challenged on the basis that ADEM failed to consider the disparate impact of the proposed facility upon a poor community with a 70% minority population. The administrative law judge held that ADEM is not required by statute to consider environmental justice issues and in fact, ADEM was barred from considering disparate impact in permitting decisions.<sup>23</sup> The judge rejected the argument that ADEM must follow US EPA’s environmental justice principles, even though ADEM, as a beneficiary of US EPA grant money should follow the requirements of Title VI and Executive Order 12,898. “On the contrary, it should be noted that ADEM administers state regulations -- not [US] EPA regulations. Only when [US] EPA requirements are incorporated by reference into ADEM’s permitting regulations via rulemaking, is ADEM authorized to apply [US] EPA requirements/regulations to the permit application process.”<sup>24</sup> The judge relied on the *Alvin Holmes* case, as well, which stands for the proposition that “ADEM has no statutory authority to consider racial and economic demographics in the permit

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<sup>19</sup> Telephone interview with Edward Hardison, Alabama General Counsel’s Office (Nov. 1, 2005).

<sup>20</sup> Alabama Dep’t of Transportation Statewide Transportation Plan, *available at* <http://www.dot.state.al.us/TransPlanning/stateplan.pdf> (last visited Jan. 24, 2006).

<sup>21</sup> *Id.*; Exec. Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations* (Feb. 11, 1994), 3 C.F.R. 859 (1995) (although the order only binds federal agencies, states receiving federal funds must derivatively heed the policies of the grant making agencies).

<sup>22</sup> *Id.*

<sup>23</sup> *East Central Alabama Alliance for Quality Living, v. Alabama Dep’t of Env’tl. Mgmt.*, 2003 AL ENV LEXIS 6 (Ala. Dep’t of Env’tl. Mgmt. March 13, 2003).

<sup>24</sup> *Id.* at 27, *citing Legal Environmental Assistance Foundation v. Ala. Dep’t of Env’tl. Mgmt.*, 832 So.2d 61, 64-65 (Ala. 2002) (federal law required ADEM to adopt statewide water policies, which constituted “rules,” and thus necessitated compliance with the rulemaking provisions of the Alabama Administrative Procedures Act).

application process.”<sup>25</sup> The judge also found no evidence of discriminatory intent in the permitting decision.

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## ALASKA

### Programs

#### Department of Conservation

Alaska does not maintain formal environmental justice policies or laws. However, the Department of Conservation (“DEC”) published *Seven Generations*, a manual that addressed environmental justice type issues.<sup>26</sup> Designed for people in rural Alaska desiring to accomplish environmental planning and management using a community-based approach, the manual assisted rural Native-American tribal communities with identifying environmental issues of concern such as drinking water quality and waste storage, and provided practical information on how to organize and advocate solutions to environmental problems.<sup>27</sup>

However, DEC **no longer uses** the *Seven Generations* manual. It was used by the Statewide Public Service Division (“SPS”), which DEC has eliminated. SPS was partially responsible for compliance assistance; currently, each of DEC’s other divisions is adjusting its programs to accommodate for the loss of this division.<sup>28</sup>

#### Landfill Location Calculator

As of 2006, DEC is drafting new regulations to empower small, rural Alaskan communities to manage their solid waste safely in compliance with the regulations. The first tool is the Landfill Location Calculator. This spreadsheet poses a set of questions regarding the land use, environmental and waste characterization factors for a community. Based on the answers to this set of questions, specific recommendations, or best management practices (“BMPs”), for safe operations of the community landfill will be prescribed. In addition to the specific BMPs, DEC is preparing a Solid Waste Guidance Manual with detailed information regarding the siting, design, operations, closure, and monitoring of small landfills. With this new approach, small communities will have the tools to use what limited resources are available to safely manage solid waste.<sup>29</sup>

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<sup>25</sup> *Alvin Holmes, et al. v. ADEM*, 1998 AL ENV LEXIS 1, at 30-31 (Ala. Dep’t of Env’tl. Mgmt. Feb. 17, 1998) (although the US. EPA has a division dealing with “environmental justice” issues per the presidential Executive Order, ADEM “is not charged with administering this directive, which is not in the form of [ADEM] regulations”).

<sup>26</sup> Alaska Dep’t of Conservation, *Seven Generations: Addressing Village Environmental Issues For Future Generations of Rural Alaska* (2001), formerly available at <http://www.state.ak.us/local/akpages/ENV.CONSERV/dsps/compasst/7generations/7gen.htm>.

<sup>27</sup> *Id.*

<sup>28</sup> Electronic mail from Laura Hastings, Regulations Specialist II Office of the Commissioner, Alaska Dep’t of Environmental Conservation (Apr. 27, 2005) (on file with authors).

<sup>29</sup> *Id.*

## Department of Transportation and Public Facilities

Alaska's Department of Transportation and Public Facilities ("DOT") employs a Title VI specialist, who audits the Department of Transportation and Public Facilities programs based on Title VI of the Civil Rights Act of 1964 and Executive Order 12,898 on Environmental Justice.<sup>30</sup> The Department of Transportation and Public Facilities also follows the 1997 *DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations* which summarizes and expands upon the requirements of Executive Order 12,898.<sup>31</sup> The Order was implemented by the U.S. DOT and adopted by Alaska's DOT to "[develop] a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well-being of minority populations and low-income populations are considered and addressed during transportation decision making."<sup>32</sup> The Department is attempting to implement environmental justice principles at all stages of the planning process for its projects.<sup>33</sup> Areas of reporting for Title VI purposes include National Highway Institute Training Administration, Program Development, Environmental Design, Consulting Contracting, Right-of-Way Construction, Research, and Alaska Marine Highway System.<sup>34</sup>

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## ARIZONA

### **Statutes**

Although Arizona does not have formal EJ laws, state law provides an opportunity to address environmental justice through a statute that generally requires disclosure of information to

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<sup>30</sup> Telephone interview with Valerie Fletcher-Mitchell, Title VI Specialist, Alaska Dep't of Transportation and Public Facilities (March 9, 2005).

<sup>31</sup> Alaska Dep't of Transportation and Public Facilities, "Civil Rights Office: Title VI of the Civil Rights Act of 1964 and Environmental Justice," <http://www.dot.state.ak.us/cvlrts/tvi.shtml> (last visited Jan. 25, 2006).

<sup>32</sup> US Dep't of Transportation, *Order on Environmental Justice*, available at [http://www.fhwa.dot.gov/environment/ejustice/dot\\_ord.htm](http://www.fhwa.dot.gov/environment/ejustice/dot_ord.htm) (last visited Jan. 24, 2006).

<sup>33</sup> Interview with Valerie Fletcher-Mitchell, *supra* note 30.

<sup>34</sup> "Civil Rights Office: Title VI of the Civil Rights Act of 1964 and Environmental Justice," *supra* note 31.

affected communities. Arizona law requires the Arizona Department of Environmental Quality (“ADEQ”) to provide notification of any major permit application to counties, cities, or towns that may be affected by a licensing decision.<sup>35</sup>

## Programs

ADEQ is committed to protecting low-income and minority communities from disparate impacts associated with permitting facilities that violate the Civil Rights Act. Responsibility for coordinating and responding to concerns about environmental justice issues or complaints rests with the Counselor to the Director of ADEQ.<sup>36</sup>

Because ADEQ receives federal financial assistance, ADEQ’s licensing decisions are subject to Title VI of the Civil Rights Act,<sup>37</sup> moreover, ADEQ complies with 40 CFR 7.30, 7.35 and 7.15 to the extent permitted by law. ADEQ’s Office of Administrative Counsel is responsible for coordinates and responds environmental justice issues and complaints and dedicates one full-time staff position to these efforts.<sup>38</sup>

A proactive environmental justice program is located in the community of South Phoenix.<sup>39</sup> A community council advising ADEQ as part of a toxins reduction pilot project in this community has selected a heavily industrialized area for environmental improvement. The council, in partnership with ADEQ and the US EPA Region 9, is developing a strategy to lower toxic emissions and reduce public exposure to toxic pollutants in the area.<sup>40</sup>

Funded by a grant from US EPA's Region 9, the project began in May, 2003, to build upon ADEQ’s efforts to protect public health and the environment in South Phoenix. The council aims to reduce the community’s exposure to toxic pollutants through a combination of pollution prevention, compliance assistance, public education and business outreach efforts. The council also seeks early reduction projects that could result in immediate environmental improvements to those living in the project's target area.<sup>41</sup> In addition to partnering with ADEQ and US EPA Region 9, the project has enlisted the aid of Maricopa County, the city of Phoenix, elected officials, civic leaders, the private sector and non-profits, community groups and local residents. Project leaders hope that the project will serve as a model for other communities’ environmental justice efforts.<sup>42</sup>

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<sup>35</sup> ARIZ. REV. STAT. § 49-111 (2006).

<sup>36</sup> Telephone interview with Patrick Gibbons, Public Information Officer, Arizona Dep’t of Environmental Quality (Oct. 24, 2003).

<sup>37</sup> Title VI of the Civil Rights Act of 1964, *as amended* 42 U.S.C. §§2000d to 2000d-7 (2005)

<sup>38</sup> Electronic mail from Maria Quintero for Ed Ranger, Office of the Administrative Counsel (Aug. 24, 2006).

<sup>39</sup> Telephone interview with Ed Ranger, Administrative Counsel, Arizona Dep’t of Environmental Quality (Mar. 18, 2005).

<sup>40</sup> Arizona Dep’t of Environmental Quality, “South Phoenix Community Action Council Selects Target Area for Toxic Reduction Plan,” <http://www.azdeq.gov/function/news/2003/dec.html> (last visited Jan. 25, 2006).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## Community Participation and Process

### Community Advisory Boards

As a component of ADEQ's Superfund program, ADEQ works with Community Advisory Boards ("CABs") to "keep citizens informed about site progress and give them the opportunity to provide their concerns, issues, and opinions to assist DEQ in determining the best way to move forward with the remediation of the site."<sup>43</sup>

CABs range from five to twenty members in size, and consist of "a diversified cross-section of the community."<sup>44</sup> A committee composed of an ADEQ representative, a local elected official, two community members, and an "interested party" (defined by the ADEQ as "an owner or operator of a facility within the site or an affected business or industry") selects the members through an application and review process.<sup>45</sup> Once formed, CABs meet at least four times per year with ADEQ representatives to discuss project status. CABs' duties include providing comments to ADEQ on cleanup goals, methods and other issues; representing the community located around the site; participating in community outreach with respect to the project; and making visits to the clean-up site. Rather than solely advising the state regarding community views and needs as many environmental justice-oriented advisory groups do, CABs serve a two-way function by also disseminating information about site progress and other developments to the community.<sup>46</sup>

### Community Involvement in Water Quality Assurance Revolving Fund (WQARF) Sites

Arizona law provides a framework for involving the community in the remediation of WQARF sites.<sup>47</sup> "These provisions ensure that the public is informed of remedial action work that may be of interest to them and given an opportunity to be directly involved in the process that leads to the determination of the final cleanup for a site."<sup>48</sup> Specifically, for sites where remediation cannot be achieved in fewer than 180 days, a number of community involvement requirements must be met, including the creation of a Community Involvement Plan (CIP) for the site, the formation of a CAB, publication of public notice, and statewide public meeting.<sup>49</sup>

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<sup>43</sup> Arizona Dep't of Environmental Quality, "Waste Programs Division: Superfund Programs: Community Involvement," <http://www.azdeq.gov/envIRON/waste/sps/community.html> (last visited Mar. 8, 2005).

<sup>44</sup> *Id.*; ARIZ. REV. STAT. § 49-289.03(E) (2006).

<sup>45</sup> ARIZ. REV. STAT. § 49-289.03(D).

<sup>46</sup> "Waste Programs Division: Superfund Programs: Community Involvement," *supra* note 43; electronic mail from Maria Quintero for Ed Ranger, *supra* note 39.

<sup>47</sup> ARIZ. REV. STAT. § 49-287.03 (2006) (specifying conditions triggering mandatory community involvement plans); ARIZ. REV. STAT. § 49-289.03 (2006) (rules for community involvement plans and community advisory boards); ARIZ. ADMIN. CODE § R18-16-301 (2005) (notification procedures).

<sup>48</sup> Electronic mail from Maria Quintero for Ed Ranger, *supra* note 39.

<sup>49</sup> *Id.*; ARIZ. REV. STAT. §§ 49-287.03(B) and (D), and § 49-289.03.



## ARKANSAS

### **Statutes**

#### Environmental Equity Act

In 1993, the Arkansas legislature passed the Arkansas Environmental Equity Act, which addresses environmental justice issues in the siting of solid waste disposal facilities.<sup>50</sup> The Arkansas legislature explicitly recognized that high impact solid waste disposal facilities tended to be concentrated in lower-income or minority communities. The law's stated intent was to "prevent[] communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities."<sup>51</sup>

The statute creates "a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility . . . within twelve (12) miles of any existing high impact solid waste management facility."<sup>52</sup> This presumption may be rebutted by showing either the lack of other suitable sites or the presence of incentives that have prompted the host community to accept the siting of the facility. Possible incentives include increased employment opportunities, host fees, financial contributions to community infrastructure, compensation for decreased property values, or subsidization of community services.<sup>53</sup> The Arkansas Department of Environmental Quality ("AR DEQ") may not process any application for a permit subject to Arkansas Code Annotated § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria required by this statute.<sup>54</sup>

#### **Performance Partnership Agreement**

In 2001, AR DEQ signed a Performance Partnership Agreement ("PPA") with the U.S. Environmental Protection Agency ("US EPA"). The PPA includes a section on environmental justice listing the following goals: (1) to enhance effectiveness in complying with Title VI of the Civil Rights Act of 1964;<sup>55</sup> (2) to provide multi-media information to community and grassroots organizations; (3) to conduct audits of possible environmental injustices throughout the states; and (4) to develop strategies to safeguard the health and safety of communities impacted by possible environmental injustices.<sup>56</sup>

In broad terms, US EPA and AR DEQ vowed to bridge the gap between regulatory agencies and the minority and low-income communities that they serve. The agencies agreed that this can be accomplished through better dissemination of environmental information; the use of computer-based mapping databases; collecting data on environmental injustices within the state; the

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<sup>50</sup> ARK. CODE ANN. § 8-6-1501 (2004).

<sup>51</sup> *Id.* at § 8-6-1501(b).

<sup>52</sup> *Id.* at § 8-6-1504(a)(1).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at § 8-6-1503.

<sup>55</sup> Title VI of the Civil Rights Act of 1964, *supra* note 37 (providing that "No person . . . shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance").

<sup>56</sup> *Performance Partnership Agreement Between the Arkansas Department of Environmental Quality and the United States Environmental Protection Agency Region 6* (effective July 1, 2001-June 30, 2002), available at [http://www.adeq.state.ar.us/diroffice/strategic\\_plan/pdfs/ppa2001-2002.pdf](http://www.adeq.state.ar.us/diroffice/strategic_plan/pdfs/ppa2001-2002.pdf) (last visited Jan. 26, 2006).

development of strategies to protect the health and safety of communities; and soliciting input from minority and low-income communities in facility siting decisions.<sup>57</sup>

## Programs

AR DEQ's funding has decreased over the past few years, constraining programmatic efforts to further environmental justice. Nonetheless, three staff members, including one attorney, are dedicated to environmental justice issues through AR DEQ's public outreach program. A representative from AR DEQ's public outreach program attends semiannual meetings in Dallas with representatives from states in US EPA Region 6 to discuss issues including environmental justice.<sup>58</sup>

While state environmental justice funding has decreased, US EPA Region 6's environmental justice and brownfield grants fund other environmental justice projects in the state. For example, a community group initiated the Koppers project in Rose City and obtained funding from US EPA. The community was concerned about groundwater contamination and strong odors emanating from a site that had prepared railroad ties in creosote "soaking ponds" for over 100 years. Several low-income and minority neighborhoods were located near the site. Through a grant from US EPA, the community was able to hire Louisiana State University to investigate the site and provide air monitoring.<sup>59</sup>

## Case

### *Pine Bluff for Safe Disposal*

In a challenge to AR DEQ's issuance of permits for a chemical weapons destruction facility, plaintiffs claimed that the facility would "create new, and exacerbate existing, disproportionate pollution impacts on minority and low-income populations."<sup>60</sup> Initially, plaintiffs rested their claim on federal law, Title VI and the Executive Order on Environmental Justice, but on appeal reframed the environmental justice claim as being a part of the general challenge to the permit's lack of adequate conditions.<sup>61</sup> The Court noted that because there was substantial evidence that "the permits will adequately protect the public health and environment and that no adverse health effects to *any persons* will result from the Facility's emissions, it logically follows that there will be no adverse impact on minorities and low-income persons."<sup>62</sup>

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<sup>57</sup> *Id.* at 22-23.

<sup>58</sup> Telephone interview with Dan Etzkorn, Attorney, Arkansas Dep't of Environmental Quality (May 26, 2005).

<sup>59</sup> *Id.*

<sup>60</sup> *Pine Bluff for Safe Disposal v. Ark. Pollution Control & Ecology Comm'n*, 354 Ark. 563, 581 (Ark. S. Ct. 2003).

<sup>61</sup> At the level of the administrative hearing, the administrative law judge ruled that no statutory or regulatory authority authorizes the Commission to hear environmental justice claim, and dismissed that claim for want of jurisdiction. *In re Pine Bluff Arsenal*, 1999 AR ENV LEXIS 97 (Ark. Pollution Control and Ecology Comm'n, Aug. 16, 1999).

<sup>62</sup> *Pine Bluff for Safe Disposal*, 354 Ark. at 581.

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## **CALIFORNIA**

### **Comprehensive EJ Statutes**

#### **Governor's Office of Planning and Research**

In 1999, the legislature passed California's first environmental justice law, SB 115 (Solis), designating the Governor's Office of Planning and Research ("OPR") as the lead agency for environmental justice programs and several of the state's environmental and state planning programs.<sup>63</sup> OPR duties include recommending and implementing state policies with regard to land-use and growth planning, and involve issuing periodic General Plan Guidelines to aid local jurisdictions in creating general plans in keeping with state requirements.<sup>64</sup>

In 2001, OPR, in conjunction with the Public Law Research Institute at University of California Hastings College of the Law, conducted a survey of state agencies to determine how state agencies addressed environmental justice.<sup>65</sup> The survey prompted OPR, along with the California Environmental Protection Agency ("CalEPA") and the US EPA, to conduct workshops for state personnel to be educated about the issues of the environmental justice movement, "federal and state laws that address environmental justice, and how to address environmental justice issues as they arise in their day-to-day work."<sup>66</sup>

With respect to community involvement, "OPR conducts EJ Forums throughout the state on a regular basis to build a network of EJ contacts throughout California and beyond, to evaluate efforts to increase meaningful public involvement in government, and to hold public hearings on EJ Guidelines for local General Plans."<sup>67</sup> However, as of 2005, the EJ coordinator position as well as the EJ program has been put on hold: OPR is said to be reassessing the future of the program.<sup>68</sup>

#### **California Environmental Protection Agency**

SB 115 also requires CalEPA to take specified actions in designing its mission for programs, policies, and standards within the agency and to develop a model environmental justice mission statement for boards, departments, and offices within the agency by January 1, 2001.<sup>69</sup> SB 115 also directs CalEPA to comport its programs and enforce its regulations in accordance with the principles of environmental justice.<sup>70</sup> The agencies that fall under CalEPA include the Air

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<sup>63</sup> CAL. GOV'T. CODE § 65040.12 (West 2006); Governor's Office of Planning and Research, "About OPR," <http://www.opr.ca.gov/about/About.html> (last visited Jan. 3, 2005).

<sup>64</sup> CAL. GOV'T CODE § 65040.12.

<sup>65</sup> Governor's Office of Planning and Research, "Environmental Justice Overview," <http://www.opr.ca.gov/ejustice/Overview.html> (last visited Jan. 3, 2006).

<sup>66</sup> *Id.*

<sup>67</sup> Governor's Office of Planning and Research, "Environmental Justice," <http://www.opr.ca.gov/ejustice/EJustice.html> (last visited Jan. 3, 2006).

<sup>68</sup> Telephone Interview with Jessica Dunning, Assistant to Executive Director, Governor's Office of Planning and Research (April 21, 2005).

<sup>69</sup> *See* SB 115, 1999 Leg. 145th Sess. (Ca. 1999), *added as* CAL. PUB. RES. CODE § 72000-01 (later renumbered as §§ 71110-11 by SB 828 (Alarcón, 2001)).

<sup>70</sup> *Id.*

Resources Board, the Integrated Waste Management Board, the State Water Resources Control Board, the Regional Water Quality Control Board, the Department of Pesticide Regulation, the Department of Toxic Substances Control, and the Office of Environmental Health Hazard Assessment.<sup>71</sup>

In accordance with SB 89 (Escutia, 2000), CalEPA formed a Working Group on Environmental Justice to develop an interagency EJ strategy.<sup>72</sup> The Working Group “is charged with identifying gaps in environmental laws, regulations and policies as they relate to environmental justice and creating a strategy to address such gaps.”<sup>73</sup> CalEPA also convened an Advisory Committee on Environmental Justice to assist the interagency Working Group.<sup>74</sup> The Committee released its draft of *Recommendations to the Interagency Working Group on Environmental Justice* for public review. The document is “intended to provide a set of comprehensive recommendations to establish and implement an effective environmental justice program at CalEPA.”<sup>75</sup> The report seeks to provide guidance on (1) improving the public’s meaning access and participation in hearings; (2) integrating EJ goals into the process of forming and implementing environmental policy; and (3) improving data collection efforts.<sup>76</sup>

In 2005, the Working Group set about to define and clarify the agency’s EJ goals. First, CalEPA adopted an EJ mission statement. The mission statement provides that “the California Environmental Protection Agency and our Boards, Departments, and Office shall accord the highest respect and value to every individual and community, by developing and conducting our public health and environmental protection programs, policies, and activities in a manner that promotes equity and affords fair treatment, accessibility, and protection for all Californians, regardless of race, age, culture, income, or geographic location.”<sup>77</sup> In accordance, the Working Group approved an EJ Strategy. The Strategy is the product of the 2001-2004 collaboration between the Interagency Working Group on Environmental Justice, the Advisory Committee on Environmental Justice, and other EJ stakeholders (including community, local government, business, industry, and Tribal representatives). The Strategy provides the foundation for addressing environmental justice issues and will be reviewed regularly and revised as necessary in consideration of evolving environmental justice issues, programs, policies, and activities. Finally, the EJ Action Plan is designed to supplement the EJ Strategy and will provide opportunities for CalEPA and the agency Boards, Departments, and Office to explore concepts and develop tools in addressing specific priorities – precautionary approaches, cumulative impacts, public participation, and community capacity-building.<sup>78</sup> The EJ Action Plan is geared towards short-term focused projects.

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<sup>71</sup> California Environmental Protection Agency, <http://www.calepa.ca.gov/EnvJustice/Partners/> (last visited Jan. 3, 2006).

<sup>72</sup> CAL. PUB. RES. CODE § 72002.

<sup>73</sup> “Environmental Justice Overview,” *supra* note 65.

<sup>74</sup> As required by SB 89 (codified at CAL. PUB. RES. CODE § 72003); CalEPA, “Advisory Committee on Environmental Justice,” <http://www.calepa.ca.gov/EnvJustice/Committee/> (last visited April 29, 2006).

<sup>75</sup> California Environmental Protection Agency, Advisory Committee on Environmental Justice, *Recommendations to the Interagency Working Group on Environmental Justice*, available at [http://www.calepa.ca.gov/EnvJustice/Documents/2003/7\\_11Report.pdf](http://www.calepa.ca.gov/EnvJustice/Documents/2003/7_11Report.pdf) (last visited Jan. 3, 2006).

<sup>76</sup> *Id.*

<sup>77</sup> Electronic mail from Malinda Hall, Special Assistant for Environmental Justice, California Environmental Protection Agency (Jan. 25, 2005). See <http://www.calepa.ca.gov/EnvJustice/> for more information.

<sup>78</sup> *Id.*

## Targeted EJ Statutes

California has passed nine other laws pertaining to environmental justice, with the state continuing to emphasize the roles that different agencies play in furthering environmental justice.<sup>79</sup> These statutes have a narrower focus, usually targeting a specific pollutant or process.

### Assembly Bill 1390 (Firebaugh, 2001)<sup>80</sup>

Extending in force through January 1, 2007, AB 1390 was enacted in the 2001-02 State Budget and directs air districts to target at least 50 percent of the \$48 million General Fund appropriated for three diesel emission reduction programs to environmental justice communities. The law exempts small air districts from this requirement. It also makes federal agencies eligible to receive grants to purchase Zero Emission Vehicles that would be located in low income and minority communities.

### Assembly Bill 1553 (Keeley, 2001)<sup>81</sup>

AB 1553 requires OPR to adopt guidelines for local agencies when addressing environmental justice issues in its general plans. OPR covered environmental justice and transit-oriented development in the 2003 version of the General Plan Guidelines.<sup>82</sup> These guidelines may be “the most comprehensive in the United States,” and include a “host of issues forecasting the direction of the movement.”<sup>83</sup>

### Senate Bill 32 (Escutia, 2001)<sup>84</sup>

SB 32 authorizes local governments to investigate and cleanup small parcels of property contaminated with hazardous waste. The bill requires CalEPA to conduct scientific peer review of screening values, or advisory figures estimating cleanup efforts needed for developing a property. Most pertinent for this EJ survey, SB 32 requires the development of a guidance document to assist citizen groups, community-based organizations, environmental organizations and others in understanding the complicated factors and procedures used for making site investigation and remediation decisions, furthering the ability of community groups to participate meaningfully in decisions with environmental justice implications.<sup>85</sup>

### Senate Bill 828 (Alarcón, 2001)<sup>86</sup>

SB 828 adds deadlines for developing an interagency environmental justice strategy affecting boards, departments and offices within the CalEPA. The bill required each of the CalEPA boards, departments, and offices, by December 31, 2003, to review, identify, and address program obstacles impeding environmental justice.

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<sup>79</sup> California Environmental Protection Agency, *Legislation: Environmental Justice Program*, <http://www.calepa.ca.gov/EnvJustice/Legislation/> (last visited Jan. 9, 2006).

<sup>80</sup> CAL. HEALTH & SAFETY CODE §§ 43023.5, 44260.

<sup>81</sup> CAL. GOV'T CODE §§ 65040.2 and 65040.12.

<sup>82</sup> Available at [http://opr.ca.gov/planning/PDFs/General\\_Plan\\_Guidelines\\_2003.pdf](http://opr.ca.gov/planning/PDFs/General_Plan_Guidelines_2003.pdf) (July 2003) (last visited Jan. 9, 2006).

<sup>83</sup> Telephone interview with Romel Pascual, former Assistant Secretary for Environmental Justice, CalEPA (July 29, 2003).

<sup>84</sup> CAL. HEALTH & SAFETY CODE §§ 57008, 57009, and 57010 and §§ 25401 *et seq.*

<sup>85</sup> *Id.* at § 57008(e).

<sup>86</sup> CAL. PUB. RES. CODE §§ 72000, 72001, 72001.5, 72002, 72003, and 72004.

Assembly Bill 2312 (Chu, 2002)<sup>87</sup>

AB 2312 establishes an Environmental Justice Small Grant Program administered by CalEPA. The law “empowers communities to address public health concerns and strengthens community involvement in environmental decision making that affects their lives,” said former California Governor Gray Davis in a press release following his signing of the bill.<sup>88</sup> The program provides grants of up to \$20,000 for local community groups focusing on local environmental issues, and aims to fund three objectives: (1) addressing environmental public health hazards, (2) informing communities about environmental justice, and (3) facilitating participation in the decision making process.<sup>89</sup>

Senate Bill 1542 (Escutia, 2002)<sup>90</sup>

SB 1542 ensures that state regulators include low-income and minority communities in the decision making for the siting of landfills. Specifically, the bill requires that the California Integrated Waste Management Board provide environmental justice models and information to local jurisdictions for siting landfills by April 1, 2003. Moreover, permit applications for new or expanded solid waste transformation or disposal facilities submitted after January 1, 2003 trigger new requirements for local agencies, which now must describe actions taken to solicit public participation of members of the affected communities, including minority and low-income populations. The statute also expands CalEPA's Advisory Committee on Environmental Justice from a (13) thirteen member committee to a (17) seventeen member committee, with required representatives from federally recognized tribes, environmental justice organizations, and business.<sup>91</sup>

Assembly Bill 1497 (Montanez, 2003)<sup>92</sup>

This law requires the operator of a solid waste facility to receive regulatory approval before making “significant changes” to a solid waste facility's design or operation beyond the scope of the original permit.<sup>93</sup> Before granting a revised permit, the enforcement agency must hold at least one public hearing on the proposed permit decision, and notify property owners within 300 feet of the waste facility of the upcoming hearing.<sup>94</sup> Further, the law requires the enforcement agency to consider “environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.”<sup>95</sup>

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<sup>87</sup> CAL. PUB. RES. CODE § 71116.

<sup>88</sup> Office of the Governor Press Release (Sept. 27, 2002), *available at* [http://www.governor.ca.gov/state/govsite/gov\\_htmldisplay.jsp?BV\\_SessionID=@@@@@0962472342.1136847424@@@@@&BV\\_EngineID=cccjaddggleimcfngcfkmdffidfng.0&CatTitle=Previous+Administration%2fPress+Release&FilePath=/govsite/press\\_release/2002\\_09/20020927\\_L02204\\_Enviro\\_justice.html&Title=GOVERNOR+DAVIS+SIGNS+ENVIRONMENTAL+JUSTICE+LEGISLATION+9%2f27%2f2002&iOID=36604](http://www.governor.ca.gov/state/govsite/gov_htmldisplay.jsp?BV_SessionID=@@@@@0962472342.1136847424@@@@@&BV_EngineID=cccjaddggleimcfngcfkmdffidfng.0&CatTitle=Previous+Administration%2fPress+Release&FilePath=/govsite/press_release/2002_09/20020927_L02204_Enviro_justice.html&Title=GOVERNOR+DAVIS+SIGNS+ENVIRONMENTAL+JUSTICE+LEGISLATION+9%2f27%2f2002&iOID=36604) (last visited Jan. 9, 2006).

<sup>89</sup> *California State Assemblymember Judy Chu – Accomplishments*, <http://democrats.assembly.ca.gov/members/a49/pdf/ab2312.pdf> (last visited Jan. 3, 2006).

<sup>90</sup> CAL. PUB. RES. CODE §§ 40912, 41701, and 71114. This law represented California's first attempt to incorporate minority and low-income populations in the landfill approval process.

<sup>91</sup> California Environmental Protection Agency, *Legislation: Environmental Justice Program*, *supra* note 79.

<sup>92</sup> The relevant provisions are to be codified at CAL. PUB. RES. CODE § 44004.

<sup>93</sup> *Id.* at § 44004(a).

<sup>94</sup> *Id.* at § 44004(h)(1)(A).

<sup>95</sup> *Id.* at § 44004(h)(1)(C).

Assembly Bill 1360 (Steinberg, 2003)<sup>96</sup>

The law directs the Office of Environmental Health Hazard Assessment (OEHHA) at CalEPA to develop “environmental indicators,” or “scientific measurements of environmental conditions or trends.”<sup>97</sup> AB 1360 requires OEHHA to develop and maintain the environmental indicator system to provide a means for evaluating the effectiveness of CalEPA's efforts in improving “environmental quality and protecting public health throughout the state, including environmental quality and public health in low-income communities and communities of color.”<sup>98</sup>

Senate Bill 1110 (Committee on Natural Resources and Water, 2005)<sup>99</sup>

SB 1110 requires OPR to develop advisory guidelines for addressing environmental justice matters in city and county general plans. It is a technical amendment, replicating the requirements of AB 1553.

The California Global Warming Solutions Act of 2006 (AB 32, Nunez)<sup>100</sup>

In addition to imposing a statewide greenhouse gas cap and reduction measures, the Act directs the California Air Resources Board (CARB) to undertake measures to safeguard EJ communities and their ability to provide meaningful input. CARB must ensure that its authorization of mandates or market mechanisms do not disproportionately impact low-income communities.<sup>101</sup> Also, CARB is required to host some public workshops on its plan for reducing carbon dioxide emissions in communities with minority populations and/or low-income populations.<sup>102</sup> Additionally, CARB is to establish an environmental justice advisory committee by July 1, 2007, with at least three members, nominated by environmental justice organizations and community groups.<sup>103</sup> The members will include people from communities in the state with the most significant exposure to air pollution, including communities with minority populations or low-income populations.<sup>104</sup> Among other things, the advisory committee is to be consulted in the creation of section 38561's scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions.

## Other Statutes

The following statutes address a core concern of the EJ movement, namely, avoiding the undue concentration of environmental risks upon EJ populations, particularly in the core areas of waste disposal and power generating facilities.

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<sup>96</sup> CAL. PUB. RES. CODE §§ 71080-02.

<sup>97</sup> *Id.* at § 71080(b).

<sup>98</sup> *Id.* at § 71081(a)(2).

<sup>99</sup> CAL. GOV'T CODE § 65040.2

<sup>100</sup> Codified at CAL. HEALTH & SAFETY CODE § 38500 *et seq.*

<sup>101</sup> CAL. HEALTH & SAFETY CODE § 38562(b)(2).

<sup>102</sup> CAL. HEALTH & SAFETY CODE §. 38561(g).

<sup>103</sup> CAL. HEALTH & SAFETY CODE § 38591(a). On March 15, 2007, the Global Warming Environmental Justice Advisory Committee Meeting held its first meeting. California Environmental Protection Agency, “Agenda,” [http://www.arb.ca.gov/cc/finalmarch15ejac\\_agenda.pdf](http://www.arb.ca.gov/cc/finalmarch15ejac_agenda.pdf) (last visited March 22, 2007).

<sup>104</sup> *Id.*

### Hazardous Waste Facility Permit Requirements

California has created enhanced public participation mechanisms in its hazardous waste permit regime.<sup>105</sup> In enacting the law, the legislature intended “to establish specific means to give the concerned public a voice in decisions relating to the siting and issuing of permits for hazardous waste facilities; and to establish a process for appealing local decisions on applications for land use approval for hazardous waste facilities.”<sup>106</sup> Before a new facility can be approved, public notification of the application must be made through newspapers, posted notices in the community, and direct mailings to adjacent property owners.<sup>107</sup> The siting requirements also create a mechanism allowing any interested party to appeal a land use decision “made by a local agency for a specified hazardous waste facility project with the Governor or the Governor's designee.”<sup>108</sup> When an appeal is filed, a special appeal board is convened and an administrative review of the local agency findings ensues.<sup>109</sup>

### Thermal Powerplant Permitting

California requires applications for the siting of a thermal powerplant to address disproportionate impacts “in a manner consistent with Section 650410.12 of the Government Code.”<sup>110</sup> The regulations promulgated by the California Public Utilities Commission to implement this law require the disproportionate impact data to include: (1) demographic information by census tract, based on the most recent census data available, showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site; (2) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the US EPA (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and (3) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site.<sup>111</sup>

### Assembly Bill 1168 (Saldana, 2005)<sup>112</sup>

In response to the potential use by communities of desalinated seawater as a water supply, AB 1168 seeks to protect the public health by ensuring the safe drinking standards of desalinated water. The bill requires that the Department of Health Services (DHS) first “identify potential contaminants and sources of contamination and ensure the safety and effectiveness of treatment processes” before issuing a water system operating permit for a water desalination facility. Like many other laws of general applicability, this bill can help protect minority and low income populations against degraded environmental conditions.

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<sup>105</sup> CAL. HEALTH & SAFETY CODE § 25199 *et seq.*

<sup>106</sup> CAL. HEALTH & SAFETY CODE § 25199(c).

<sup>107</sup> *Id.* at § 25199.7.

<sup>108</sup> *Id.* at § 25199.9.

<sup>109</sup> *Id.*

<sup>110</sup> CAL. PUB. RES. CODE § 25550 (g), *see also* CAL. GOV'T CODE § 650410.12 (defining “environmental justice” for California, and outlining OPR’s duties with respect to coordinating state government action in keeping with EJ principles).

<sup>111</sup> CAL. CODE REGS. tit. 20, § 2022(b)(4) (Barclays 2003).

<sup>112</sup> The relevant provisions were to be codified at CAL. HEALTH & SAFETY CODE § 116294, but the bill was vetoed on October 7, 2005.



## Policies and Programs

### California Air Resources Board

In 2001, the California Air Resources Board (“CARB”) published its *Environmental Justice Policies and Actions* report, according to which it seeks to “integrate environmental justice into all of [its] programs, policies, and regulations.”<sup>113</sup> CARB works with local air quality management districts to improve air quality through the dissemination of information and promotion of pollution-control programs through improved siting, mitigation, and source control. CARB seeks to increase community engagement through improved access to information for low-income and minority communities so that community members can take “a more active role in decisions affecting air pollution in their communities.”<sup>114</sup> Greater outreach and the solicitation of community input will be promoted by translation services and community meetings.<sup>115</sup> With the local air districts, CARB will work “to strengthen enforcement activities at the community level across the State.”<sup>116</sup> Further support is given to the “research and data collection needed to reduce cumulative emissions, exposure, and health risks, as appropriate, in all communities, especially low-income and minority communities.”<sup>117</sup>

In April 2005, CARB issued the “Air Quality and Land Use Handbook: A Community Health Perspective.”<sup>118</sup> The Handbook advises air quality districts and local land use planning organizations on how to reduce community exposure to air pollution through siting. The document includes public health information and recommendations on siting sensitive land uses.<sup>119</sup> Specifically, the report sets out guidelines for the size of buffer zones around pollution sources, in order to protect sensitive land uses. In addition, CARB suggests tools to improve air quality assessments, and encourages greater community outreach to increase community involvement in the land use planning process.<sup>120</sup>

### CalEPA’s Public Participation Programs

CalEPA has a number of opportunities for public participation including public forums, an online discussion forum that provides for on-going feedback and dialogue, and a Listserv that emails participants with updates on EJ Action Plan implementation, announcements of upcoming EJ activities and public input opportunities, and updates on the CalEPA EJ website.<sup>121</sup>

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<sup>113</sup> California Environmental Protection Agency, California Air Resources Board, *Policies and Actions for Environmental Justice* (Dec. 13, 2001), available at <http://www.arb.ca.gov/ch/programs/ej/ejpolicies.pdf>, at 3 (last visited Jan. 4, 2006).

<sup>114</sup> *Id.* at 2.

<sup>115</sup> *Id.* at 4.

<sup>116</sup> *Id.* at 8.

<sup>117</sup> *Id.* at 11.

<sup>118</sup> California Environmental Protection Agency, California Air Resources Board, “Air Quality and Land Use Handbook: A Community Health Perspective” (April 2005) available at <http://www.arb.ca.gov/ch/handbook.pdf> (last visited Jan. 9, 2006).

<sup>119</sup> *Id.* at 1.

<sup>120</sup> *Id.* at 53-54, 58-60.

<sup>121</sup> California Environmental Protection Agency, “Public Participation in Cal/EPA’s EJ Program,” <http://www.calepa.ca.gov/EnvJustice/Participation/> (last visited May 29, 2005).

### CALFED Bay-Delta Program

The California Bay-Delta Authority's ("CALFED") mission is "to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System."<sup>122</sup> CALFED takes environmental justice into account in the examination of "the potential effects of water management reforms on rural communities and the public health and financial impacts of ecosystem restoration and water quality program actions on the large numbers of minorities and disadvantaged people living in urban as well as rural areas."<sup>123</sup> Through its two-tiered Environmental Justice Work Plan, CALFED seeks to develop long-term plans focused on environmental justice, while addressing short-term environmental justice goals.<sup>124</sup>

CALFED appointed an interim Environmental Justice Coordinator, who convened regional workshops "geographically dispersed across the State, to hold discussions and gain input on environmental justice issues related to CALFED implementation."<sup>125</sup> The interim coordinator also formed a subcommittee "that will operate as a public advisory group" and meets on an almost monthly basis.<sup>126</sup>

### California Department of Transportation

The California Department of Transportation ("CalTrans") has developed an Environmental Justice Desk Guide "to provide guidance and background information to planners at all levels (state, regional, local and community) on the principles and best practices in Environmental Justice and Context-Sensitive Planning."<sup>127</sup> The Guide is the first document of its kind to address environmental justice in California transportation planning.

CalTrans also provides grants to promote environmental justice, and will offer an estimated \$3 million in the 2003-04 fiscal year, with six possible application categories: Context-Sensitive Planning, Community Planning, Partnership Planning, Statewide Planning, Transit Technical Assistance, and Transit Professional Development.<sup>128</sup>

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<sup>122</sup> California Bay-Delta Authority, "About CALFED," <http://calwater.ca.gov/AboutCalfed/AboutCalfed.shtml> (last visited Jan. 5, 2006).

<sup>123</sup> California Bay-Delta Authority, "Environmental Justice," [http://calwater.ca.gov/EnvironmentalJustice/Environmental\\_Justice.asp](http://calwater.ca.gov/EnvironmentalJustice/Environmental_Justice.asp) (last visited April 29, 2006).

<sup>124</sup> California Bay-Delta Authority, "Environmental Justice Fact Sheet," [http://calwater.ca.gov/EnvironmentalJustice/adobe\\_pdf/EJ%20Fact%20Sheet\\_061903\\_English.pdf](http://calwater.ca.gov/EnvironmentalJustice/adobe_pdf/EJ%20Fact%20Sheet_061903_English.pdf) (last visited Jan. 10, 2006).

<sup>125</sup> California Bay-Delta Authority, "Environmental Justice Accomplishments," [http://calwater.ca.gov/EnvironmentalJustice/EJ\\_Accomplishments.asp](http://calwater.ca.gov/EnvironmentalJustice/EJ_Accomplishments.asp) (last visited May 29, 2005).

<sup>126</sup> *Id.*; CALFED Draft Subcommittee Description, available at [http://calwater.ca.gov/BDPAC/Subcommittees/EnvironmentalJustice/BDPAC\\_EJ\\_Subcommittee\\_DraftDescription.pdf](http://calwater.ca.gov/BDPAC/Subcommittees/EnvironmentalJustice/BDPAC_EJ_Subcommittee_DraftDescription.pdf) (last visited Jan. 10, 2006).

<sup>127</sup> California Dep't of Transportation, <http://www.dot.ca.gov/hq/tpp/offices/opar/titleVIandEJ.htm> (last visited Jan. 5, 2006).

<sup>128</sup> *Id.*

## Cases

### *Bakersfield Citizens for Local Control*<sup>129</sup>

A community group challenged the development of two large retail shopping centers less than four miles apart, with a combined 1.1 million square feet of retail space. The plaintiffs alleged defects in the environmental impact reports (“EIRs”) required by the California Environmental Quality Act (“CEQA”) for all projects with direct and indirect “significant effects” on the environment. Specifically, plaintiffs argued that the EIRs failed to discuss whether the shopping centers could lead to urban decay, and were inadequate, as a matter of California law.

The court noted that ordinarily “economic and social effects of proposed projects are outside of CEQA’s purview.” Regarding the development of the two shopping centers, however, the court was persuaded that the economic and social effects individually and collectively caused by the proposed shopping center could result in significant, physical effects of urban decay or deterioration. “[I]f the forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts.”<sup>130</sup>

### *In re Spirito Family Trust (2005)*.<sup>131</sup>

The California Department of Toxic Substances Control (DTSC) issued a determination of violation and imminent and substantial Endangerment against the landowner of an abandoned plating facility in Los Angeles. The corporation formerly doing business at the site had left drums, tanks and open baths of hazardous substances, including chromium, copper, cyanide, chromic acid and nickel, in a mixed residential/light industrial neighborhood of 6500 residents. DTSC ordered the landowner to cover all containers and tanks known to contain hazardous substances and as well as to create a workplan for the removal and disposal of the hazardous substances. Upon DTSC acceptance of the workplan, implementation was to begin within ten days.

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## COLORADO

### Programs

Colorado is attempting to incorporate environmental justice into all program areas, rather than contain it within its own distinct program. The agency sees this approach as a more successful way to integrate environmental justice into all areas of environmental concern. In addition, the Northeast Denver Environmental Initiative, established by a coalition of individuals, citizen groups,

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<sup>129</sup> *Bakersfield Citizens for Local Control v. Bakersfield*, 124 Cal. App. 4th 1184 (Ct. App. Ca. 2004).

<sup>130</sup> 124 Cal. App. 4th at 1205 (citations omitted).

<sup>131</sup> *In re Spirito Family Trust* 2005 Cal. ENV LEXIS 71 (Cal. Dep’t Toxic Substances Control Oct. 7, 2005).

and government agencies, is working with US EPA Region 13 on environmental justice programs as part of the Performance Partnership Agreement.<sup>132</sup>

### Supplemental Environmental Projects

Colorado allows violators of environmental laws and regulations to reduce the amount of their fines by funding an approved environmentally beneficial project, as part of the settlement of an enforcement action.<sup>133</sup> These beneficial projects are formally known as Supplemental Environmental Projects (“SEPs”). SEPs must not involve any action required by local, state or federal law, and approval of SEPs is at the discretion of the Colorado Department of Public Health and Environment (“CDPHE”). While SEPs may be used to mitigate some or all of a civil penalty, “the cost of a SEP will generally exceed the amount of penalty mitigation offered in exchange.”<sup>134</sup> SEPs are attractive to the violator for their public relations value and, unlike a civil penalty, can potentially be deducted as a business expense. The five categories of approvable SEPs are: (1) pollution prevention projects; (2) pollution reduction projects; (3) environmental and restoration projects; (4) environmental assessments; and (5) environmental awareness or public health projects.<sup>135</sup>

To determine the parameters of a SEP, CDPHE inquires into the environmental priorities of the community or communities involved. CDPHE seeks out community members to facilitate public participation in their programs through outreach efforts such as newspaper notices and networking.<sup>136</sup> SEPs promote environmental justice in two ways: by addressing historic patterns of environmental unfairness with new resources, and by building political and social capacity in affected communities.

Upon approval of a SEP, the extent to which a SEP will mitigate a penalty is determined by multiple factors. Significantly, one factor favors projects that “mitigate damage or reduce risk to minority or low-income populations that have been disproportionately exposed to pollution, or are at environmental risk,” and CDPHE accords these projects a greater degree of penalty reduction.<sup>137</sup>

CDPHE has approved a range of SEPs. For example, because Commerce City is heavily impacted by asthma, a SEP led to the distribution of inhalers and a program called the “Betty Breathe Bus,” which provided education and nursing support to the community. Some of Colorado's energy efficiency SEPs have also targeted environmental justice communities and low-income homes. A SEP in a migrant farm worker community provided funding to install photovoltaic technology at a community center, in order to reduce its operational costs. CDPHE is also investigating water quality in areas predominately inhabited by migrant farm workers.<sup>138</sup>

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<sup>132</sup> Telephone interview with Jill Cooper, Sustainability Program Director and Senior Advisor to the Office of Environmental Programs, Colorado Dep’t of Public Health and Environment (Apr. 7, 2005).

<sup>133</sup> *Colorado Department of Public Health and Environment Agency-wide Supplemental Environmental Projects Policy* [“*Colorado SEP Policy*”], at 1, available at <http://www.cdphe.state.co.us/sep/CDPHESEPPolicy.pdf> (last visited May 28, 2005).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Interview with Jill Cooper, *supra* note 132.

<sup>137</sup> *Colorado SEP Policy*, *supra* note 133.

<sup>138</sup> Interview with Jill Cooper, *supra* note 132.

## Performance Partnership Agreement

The 2001-2002 Colorado Environmental Performance Partnership Agreement (“PPA”) specifically addressed community-based and environmental justice programs.<sup>139</sup> The plan recommended a “coordination and contact” process at the Colorado Department of Public Health and Environment (“CDPHE”) with the goal of developing cross-media coordination and integration. US EPA and CDPHE also agreed to identify joint priorities, coordinate processes, pool resources, and continue to develop a “place driven” rather than a “program driven” approach. This perspective recognizes that the individuals living and working in a particular community have a large stake in its environmental quality, and should be involved in decisions affecting their environment. Furthermore, US EPA and CDPHE agreed that other specific areas of concern included “community-based environmental protection, industrial sector compliance activities, integrated environmental data systems and funding to achieve equitable environmental results.”<sup>140</sup>

The fiscal year 2005 PPA continues to emphasize the goal of environmental justice, with substantially similar language to the prior PPA.<sup>141</sup> Notably, the definition of “environmental justice” is confirmed as meaning “the fair treatment and meaningful involvement of all people regardless of race and income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Fair treatment implies that no group of people including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies.”<sup>142</sup>

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## CONNECTICUT

## Policy

In 1993, the Connecticut Department of Environmental Protection’s (“DEP”) developed an Environmental Equity Policy that states “no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits.”<sup>143</sup> The policy proposes several courses of action for DEP to take when incorporating environmental equity into its program

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<sup>139</sup> Colorado Dep’t of Public Health and Environment and US EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2002*, at 8-9, 20 (on file with authors).

<sup>140</sup> *Id.* at 8.

<sup>141</sup> Colorado Dep’t of Public Health and Environment and US EPA Region 8, *Colorado Environmental Performance Partnership Agreement - FY2005*, available at <http://www.cdphe.state.co.us/oe/ceppa/fy05ppafinal.pdf> (last visited Jan. 26, 2006).

<sup>142</sup> *Id.* at 38-39.

<sup>143</sup> Connecticut Dep’t of Environmental Protection, “Environmental Equity Policy,” <http://www.dep.state.ct.us/envequity/envequitypolicy.htm> (last visited Nov. 2, 2005), *see also* “The Environmental Equity Movement Fact Sheet,” [http://www.dep.state.ct.us/pao/general\\_fact/envequit.htm](http://www.dep.state.ct.us/pao/general_fact/envequit.htm) (last visited Nov. 2, 2005).

development, policy making, and regulatory activities.<sup>144</sup> An aim of the policy is “to enhance meaningful access to all DEP proceedings and ensure opportunities for communication with state regulators to our diverse communities.”<sup>145</sup> As part of this social justice initiative, Environmental Justice Community Advisory Boards were created in Hartford and New Haven in 1998.

## **Programs & Services**

### Environmental Justice Program

DEP’s website lists the various programs and services managed by the Environmental Justice Program, formerly called the Office of Urban and Community Ecology.<sup>146</sup> Among other things, DEP assesses and responds to environmental problems in low income and minority communities; develops strategies to increase public participation in the agency’s decisions making process and administrative proceedings; educates the public on DEP regulation, policies, and procedures; and works to decrease language barriers.<sup>147</sup> In 2005, DEP created a manual to help citizens understand the permitting process.<sup>148</sup> The *User’s Guide to Environmental Permits* is available on the DEP website.<sup>149</sup> Additionally, in 2005, DEP was in the process of creating a program in which project applicants were required to prepare outreach plans as part of their permit applications after the program proved successful within the Bureau of Waste Management.<sup>150</sup>

### EJ Complaint Contact and Investigator

One of the most notable things about the Environmental Justice Program at DEP is its “EJ Complaint Investigator.”<sup>151</sup> This investigator is one of three DEP staffers whose job is to answer and investigate complaints related to environmental justice. According to Edith Pestana, Connecticut’s Environmental Justice Administrator, “nothing is out of [DEP] jurisdiction.”<sup>152</sup> For instance, DEP could receive an environmental justice complaint that implicates the jurisdiction and services of four different states, local, and or federal agencies. Then the Environmental Justice Program will see to it that all agencies are notified about the complaint, and monitor the progress of the investigations.<sup>153</sup> To illustrate this point, Ms. Pestana described a hypothetical illegal auto body shop, which could include aerosol paint violations (possible Department of Public Health jurisdiction), chemical storage and dumping (DEP jurisdiction), parked cars lining the street (Department of Motor Vehicle jurisdiction), and even roaming guard dogs (Local Animal Control jurisdiction).

The tactic is noteworthy because the staffers are enforcement and not policy personnel. The complaint investigators assist EJ populations in navigating the state bureaucracy, and serve as advocates of the EJ complaint.

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<sup>144</sup> “Environmental Equity Policy,” *id.*

<sup>145</sup> Connecticut Dep’t of Environmental Protection, “Connecticut Recognized for Work in Environmental Justice and Will Serve on the National Environmental Justice Advisory Council” (Sept. 28, 1998), <http://www.dep.state.ct.us/whatschap/press/1998/cr092898.htm> (last visited Feb. 20, 2006).

<sup>146</sup> Connecticut Dep’t of Environmental Protection, “Environmental Justice,” <http://www.dep.state.ct.us/envjustice/index.htm> (last visited Mar. 17, 2006).

<sup>147</sup> Connecticut Dep’t of Environmental Protection, “Overview—Environmental Justice Program,” available at <http://www.dep.state.ct.us/envjustice/program.htm> (last visited Nov. 2, 2005).

<sup>148</sup> Telephone interview with Edith Pestana, Administrator, Environmental Justice Program (Nov. 2, 2005).

<sup>149</sup> Connecticut Dep’t of Environmental Protection, “User’s Guide to Environmental Permits,” <http://www.dep.state.ct.us/pao/userguid.htm> (last visited Feb. 20, 2006).

<sup>150</sup> Telephone interview with Edith Pestana (Nov. 2, 2005), *supra* note 148.

<sup>151</sup> Telephone interview with Edith Pestana, Administrator, Environmental Equity Program (Feb. 24, 2003).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*



### Special EJ Focus on Schools

In apparent recognition that children are among the most vulnerable to environmental health risks, DEP focuses much of its environmental justice efforts towards schools. One element of its school program is DEP's school environmental justice inspections -- scanning for violations ranging from vermin infestations and faulty playground equipment to the misuse of pesticides. The program also creates "outdoor classrooms" in urban areas. These outdoor classrooms range from setting up vegetable gardens to making "nature pathways" in the attempt to bring environmental benefits to a population more likely to experience environmental risks.<sup>154</sup>

### State and Local Government Joint Program

In an effort to address some of the health problems experienced in EJ communities in the city of Hartford, DEP, through its Hartford Neighborhood Environmental Project, assembled an extensive chart of environmental contacts for Hartford residents.<sup>155</sup> These contacts were initially meant to help neighborhood block watch captains "to become aware of the environmental and health related issues in their neighborhoods" and were later made available on the DEP website for all Hartford residents.<sup>156</sup> The chart includes both city and state contacts to help alleviate a variety of environmental topics, including asbestos, unwanted animals and rats, carbon monoxide, brownfields, drinking water quality, the dumping of used motor oil and antifreeze, garbage, household hazardous products, land use, lead paint, noise pollution, odors, smoke, dust, pesticides, radon, recycling, sewers, underground storage tanks, and environmental equity.<sup>157</sup>

### **Supplemental Environmental Projects**

Connecticut's Supplemental Environmental Projects ("SEP") policy allows DEP to include SEPs as a component of consensual settlements of environmental enforcement actions, resulting in a reduction in the cash penalty assessed.<sup>158</sup> DEP's SEP policy states that after threshold concerns are met (e.g., that the project does not further degrade the environment), the SEP should fit under one of eight categories, such as environmental assessment, public health, and environmental restoration. Of the eight categories, "pollution prevention projects are preferred, especially a pollution prevention project that positively impacts communities where environmental equity may be an issue."<sup>159</sup> DEP envisions its SEP policy as falling under its longstanding commitment that "no segment of the population should, because of racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits."<sup>160</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> Connecticut Dep't of Environmental Protection, "Environmental Contacts for Hartford Neighborhoods," <http://www.dep.state.ct.us/wst/p2/urban/econtacts.htm> (last visited Nov. 2, 2005).

<sup>156</sup> *Id.*

<sup>157</sup> Connecticut Dep't of Environmental Protection, "Urban Initiatives for Pollution Prevention," <http://www.dep.state.ct.us/wst/p2/urban/urbanin.htm> (last visited Nov. 2, 2005).

<sup>158</sup> Connecticut Dep't of Environmental Protection, *Policy on Supplemental Environmental Projects* (1996), at 1, available at <http://dep.state.ct.us/enf/policies/sep.pdf> (last visited Nov. 2, 2005).

<sup>159</sup> *Id.* at 6.

<sup>160</sup> *Id.* at fn. 4.

## Performance Partnership Agreement

In Connecticut's PPA, DEP agreed to "continue to work with environmental equity communities to improve access to the permitting process."<sup>161</sup> DEP agreed to focus assistance and outreach efforts on a number of constituencies including minorities and other historically under-represented interests to improve environmental quality.<sup>162</sup> Community-based initiatives are to be targeted at enhanced federal RCRA activities within identified Environmental Equity communities in Connecticut.<sup>163</sup>

## Case

### *Organized N. Easterners v. Capital City Econ Development Authority*<sup>164</sup>

Connecticut DEP approved a remediation plan that involved the construction and operation of diesel generators and the discharge of wastewater into the sanitary sewer. Plaintiffs claimed that "the traffic analysis in the [environmental impact evaluation] was inadequate and that the protection against hazardous waste at the site in the Remedial Action Plan was also inadequate."<sup>165</sup> The court dismissed the complaint, for failure to show that any members of the citizen group bringing the action were directly injured by the permit approvals, and hence, did not have legal standing to sue: "[g]eneralized fear about increased traffic resulting from a zone change do[es] not establish that a resident's property, personal or legal rights are specifically injured so as to constitute aggrievement."<sup>166</sup>

The court nonetheless turned to the merits of the case, plaintiff's contention that Commissioner's decision was made without adequate notice of an impending hearing, as required by Connecticut law.<sup>167</sup> The court ruled that under the "reasonable person" test, the notice published in a local newspaper "fairly and sufficiently" informed the public of the meeting.

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<sup>161</sup> *Environmental Performance Partnership Agreement Between Connecticut Department of Environmental Protection and US Environmental Protection Agency, Region 1 for Federal Fiscal Years 2000 and 2001*, at III.B.3, available at <http://www.dep.state.ct.us/deao/ppa/ppa.pdf> (last visited Nov. 2, 2005).

<sup>162</sup> *Id.* at III.B.4.

<sup>163</sup> *Id.* at III.F.2; Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (1976).

<sup>164</sup> *Organized N. Easterners & Clay Hill & N. End v. Capital City Econ Development Authority*, 2001 Conn. Super. Lexis 1665 (Sup. Ct. 2001).

<sup>165</sup> *Id.* at \*5.

<sup>166</sup> *Id.* at \*13 (citation omitted).

<sup>167</sup> CONN. GEN. STAT. § 32-664(g).



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## **DELAWARE**

### **Statute**

In September 1999, the Delaware Department of Natural Resources and Environmental Control (“DNREC”) chartered an interdisciplinary external advisory committee, the Community Involvement Advisory Council (“CIAC”), to address barriers to inclusion of under-served populations in environmental decision making.<sup>168</sup> Two years later, the legislature made the CIAC a permanent entity for the purpose of advising the Secretary of DNREC.<sup>169</sup> CIAC’s mission is to address interactions between the DNREC and local communities and to work to ensure “that no community in the State is disparately affected by environmental impacts.”<sup>170</sup> With eleven appointed members appointed by the Governor, the committee includes representatives from adversely affected communities, community-based nonprofit organizations, environmental organizations, health care providers, local government, academic institutions and business/industry.<sup>171</sup>

In addition to establishing the CIAC, the legislature created a Community Ombudsman position to serve as a liaison between DNREC and local communities statewide. The Community Ombudsman “shall engage communities in identifying and understanding environmental issues and addressing or resolving environmental problems, advocate for communities, assist communities in obtaining information on environmental issues, and serve as a point of contact for the Department with communities and community organizations.”<sup>172</sup>

#### **Community Environmental Performance Fund (House Bill 192, 2004)**<sup>173</sup>

The Community Environmental Project Fund (“CEPF”) consists of 25% of the civil and administrative penalties collected by DNREC under its general enforcement authority. These funds are dedicated to environmentally beneficial projects selected by the Secretary of DNREC in consultation with the CIAC. Proposed projects must meet two criteria: 1) the project must either mitigate or eliminate pollution; or remove risks to human health in the environment; or improve native habitats or recreational opportunities; and 2) the project must benefit the community in which the underlying violation occurred (geographic nexus). Eligible applicants include Delaware civic and community organizations, non-profit entities, educational institutions, counties, municipal governments, state agencies, and quasi-state agencies that represent the affected community.

Since the enactment of the law, CEPF funds totaling more than \$240,000 have been awarded to organizations, including the Southbridge Civic Association, Main Street Delaware City, Inc. and Capitol Park Community Clean Up. Currently, the fund has \$1.67 million available for projects in the state. DNREC prefers projects that support DNREC’s primary environmental goals

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<sup>168</sup> *Report of the Community Involvement Advisory Committee to the Delaware Department of Natural Resources and Environmental Control* [“Report of the Community Involvement Advisory Committee”], March 22, 2001, available at <http://www.dnrec.state.de.us/dnrec2000/Admin/BusServ/CIACReport.pdf> (last visited May 28, 2005).

<sup>169</sup> DEL. CODE ANN. tit. 29 § 8016A (2005).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> DEL. CODE ANN. tit. 7 § 6041.

and those projects with demonstrated community participation and support (e.g., volunteer hours, matching funds, donated in-kind services).<sup>174</sup>

## Study

CIAC released a March 2001 report that contains several recommendations for facilitating and implementing community participation in environmental permitting and decision making.<sup>175</sup> As of March 2005, the CIAC continues to meet once every other month, and several of its recommendations have been implemented. The committee is planning to submit a report to Delaware legislators, and may release a second report as a follow-up to the 2001 report.<sup>176</sup>

## Programs

As noted above, the DNREC employs a Community Ombudsman who works to enhance the flow of information between communities and DNREC, increase community participation, and facilitate dialogue among all stakeholders during the decision making process.<sup>177</sup>

The Community Ombudsman also assists in the operation of the CEPF program. Communities uncertain as to their eligibility or the availability of penalty funds in their area are encouraged to work with the Community Ombudsman in developing the application. CEPF applications are reviewed by the CIAC twice each year, in mid-June and mid-October.<sup>178</sup>

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<sup>174</sup> Delaware Dep't of Natural Resources and Environmental Control, "CIAC Seeks Applications for Community Environmental Projects,"

<http://www.dnrec.state.de.us/DNREC2000/Admin/Press/Story1.asp?PRID=2036> (last visited May 12, 2006).

<sup>175</sup> "Report of the Community Involvement Advisory Committee," *supra* note 168.

<sup>176</sup> Telephone interview with Karen Garrison, Administrative Specialist, Delaware Dep't of Natural Resources and Environmental Control (March 18, 2005).

<sup>177</sup> Delaware Dep't of Natural Resources and Environmental Control, *Lisa Diaz Riegel Becomes DNREC Community Ombudsman; Riegel To Work Closely With Delaware's Community Involvement Advisory Council*, <http://www.dnrec.state.de.us/DNREC2000/Admin/Press/Story1.asp?offset=25&PRID=1064> (last visited Mar. 22, 2006).

<sup>178</sup> E-mail from James Brunswick, Community Ombudsman (May 12, 2006) (on file with authors).

## **DISTRICT OF COLUMBIA**

### **Statutes**

Provisions within the District's solid waste facility siting statutes address environmental justice concerns and neighborhood participation. For example, as part of the permit review, all solid waste facilities must create a traffic flow plan and post that plan for public review. Advisory Neighborhood Councils then must submit comments within forty-five days.<sup>179</sup> Furthermore, prior to making a solid waste siting decision, the Solid Waste Transfer Facility Site Selection Advisory Panel must consult with the National Environmental Justice Advisory Council.<sup>180</sup>

### **Program and Services**

The District of Columbia has an EJ program within the Department of Health ("Department"), in the Environmental Health Administration division.<sup>181</sup> The purpose of the program is to ensure fair treatment of residents when the Department implements environmental health programs, issues permits, or enforces District environmental health laws. The program also seeks to reduce disparate impacts and focus public attention on environmental health issues through education and outreach.<sup>182</sup>

The EJ program is staffed by an EJ Coordinator who responds to public concerns and educates communities on how to participate in environmental decision making. The EJ Coordinator may also comment on the potential EJ impacts of projects subject to the Department's environmental review process.<sup>183</sup>

Partnering with US EPA, the Department is trying to improve auto repair shops' compliance with environmental rules and regulations through the Environmental Education for the Compliance of Auto Repair Shops (EE-CARS) Program. The program targets auto repair shops in one section of the city (Ward 5 of the District) and examines whether low income and/or minority communities are disproportionately impacted by potentially hazardous wastes and emissions associated with the repair shops.<sup>184</sup> By involving the industry, the community, and other stakeholders, the project seeks "to establish contact with, educate and provide compliance oversight to auto service activities."<sup>185</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> D.C. CODE ANN. § 8-1061 (2005).

<sup>181</sup> Telephone interview with Kendolyn Hodges-Simons, Environmental Justice Coordinator, District of Columbia Dep't of Health (Oct. 16, 2003).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> DC Dep't of Health, "District of Columbia Final Total Maximum Daily Load for Oil and Grease in Anacostia River, October 2003," at 12, [http://app.doh.dc.gov/services/administration\\_offices/environmental/services2/water\\_division/pdf/fin\\_ana\\_oil\\_grease\\_tmdl.pdf](http://app.doh.dc.gov/services/administration_offices/environmental/services2/water_division/pdf/fin_ana_oil_grease_tmdl.pdf) (last visited Mar. 20, 2006).

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## **FLORIDA**

### **Statutes**

#### **Community Environmental Health Program**

In 1999, the state legislature created the Community Environmental Health Program (“Program”).<sup>186</sup> The primary purpose of the Program “is to ensure the availability of public health services to members of low-income communities that may be adversely affected by contaminated sites located in or near the community.”<sup>187</sup> These services include measures to address the health effects associated with exposure to environmental contamination.<sup>188</sup>

#### **Community Environmental Health Advisory Board**

Florida law instructs the Department of Health (“DOH”) to create a Community Environmental Health Advisory Board (“Board”), with the majority of members being low-income residents and the rest composed of representatives from county health departments, health care professionals and providers, and elected officials.<sup>189</sup> The Board is required to “identify the community environmental health needs and types of services which should be provided.”<sup>190</sup> The Board has stopped meeting however, due to the loss of funding in 2002.<sup>191</sup>

#### **Siting of Hazardous Waste Facilities**

The Department of Environmental Regulation must notify each local government within three miles of a proposed hazardous waste facility within thirty days of the receipt of a complete application to construct the facility.<sup>192</sup> In addition, a notice must be published in a local newspaper, alerting the affected communities and helping to avoid disproportionate concentration of hazardous waste facilities within minority and low-income communities.<sup>193</sup>

#### **Brownfield Redevelopment Act**

Florida’s extensive brownfields law addresses environmental justice concerns. The preamble of the brownfields statute states that minority and low-income communities are disproportionately impacted by environmentally hazardous sites, and “the existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human diseases and illness, crime, educational and employment opportunities, and infrastructure decay.”<sup>194</sup>

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<sup>186</sup> FLA. REV. STAT. § 381.1015 (2003).

<sup>187</sup> *Id.* at § 381.1015(1).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at § 381.1015(2).

<sup>190</sup> *Id.*

<sup>191</sup> National Academy of Public Administration, *Models for Change: Efforts by Four State to Address Environmental Justice* (June 2002), available at [http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/\\$FILE/Final+State+EJ+2002.pdf](http://71.4.192.38/NAPA/NAPAPubs.nsf/9172a14f9dd0c36685256967006510cd/95fffb0b62b4e26d85256be3004ff436/$FILE/Final+State+EJ+2002.pdf) (last visited Feb. 14, 2006).

<sup>192</sup> FLA. REV. STAT. § 403.723 (3).

<sup>193</sup> *Id.*

<sup>194</sup> FLA. REV. STAT. § 376.78 (8).

Furthermore, the statute states that there is a need for the health and risk exposure assessments of minority and poverty populations around environmentally hazardous sites in this state.<sup>195</sup>

Local governments responsible for brownfields redevelopment must utilize advisory committees for “the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area...and environmental justice.”<sup>196</sup> The advisory panel should be drawn from residents from the area surrounding the brownfield area.<sup>197</sup>

## **Programs and Services**

### Partnership with Academia

Unlike the majority of states, which administer environmental justice programs within the environmental agency’s jurisdiction, Florida has adopted a university-based approach. The Center for Environmental Equity and Justice (“CEEJ”) was created by the Florida legislature in 1998 to “conduct and facilitate research, develop policies, engage in education, training, and community outreach activities with respect to environmental equity and justice issues.”<sup>198</sup> According to the statute, the Center is administered through the Environmental Sciences Institute at Florida Agricultural & Mechanical University. In addition to conducting environmental justice research and training in Florida, CEEJ also maintains the state’s birth-defects registry, which can be used to determine links between birth defects and environmental conditions.<sup>199</sup>

### Center for Urban Transportation Research

Under a mandate from the Florida Highway Administration, the Florida Department of Transportation in conjunction with researchers at the Center for Urban Transportation Research at the University of South Florida completed a report on environmental justice and community impact assessment for the state’s transit agencies.<sup>200</sup>

The objective of the project was to provide the state’s transit agencies with information related to environmental justice and social equity using community impact assessment techniques. The ultimate goal of the project is encourage transit planners to keep environmental justice concerns in mind when planning, and to use the community impact assessment data to better transportation in all communities.<sup>201</sup>

In order to facilitate their objectives, project researchers conducted both phone interviews and written surveys to determine the current awareness regarding environmental justice and social equity issues. The research results were compiled into a booklet entitled *Environmental Justice and Community Impact Statement for Transit Agencies*.<sup>202</sup>

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<sup>195</sup> FLA. REV. STAT. § 376.78(6) - (8).

<sup>196</sup> FLA. REV. STAT. § 376.80 (4).

<sup>197</sup> *Id.*

<sup>198</sup> Center for Environmental Equity and Justice, [www.famu.edu/acad/colleges/esi/CEEJ/mission.html](http://www.famu.edu/acad/colleges/esi/CEEJ/mission.html) (last visited Feb. 14, 2006); FLA. REV. STAT. § 760.854.

<sup>199</sup> Anne E. Goode, “State Approaches to Environmental Justice,” *available at* <http://www.abanet.org/irr/committees/environmental/newsletter/dec03/Goode.html> (last visited March 3, 2006)

<sup>200</sup> Research conducted by Beverly Ward, Ph.D., at the Center for Urban Transportation Research at the University of Southern Florida. Report is available at <http://www.ciatrans.net/ciaejbooklet.html> (last visited Feb. 13, 2006)

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

## Supplemental Environmental Projects

In 1998, Florida's legislature passed the Accidental Release Prevention and Risk Management Planning Act, providing a framework for the delegation of authority from US EPA under the federal Clean Air Act. The law specifies enforcement authorities and remedies for violations of the reporting requirements for the accidental release of air-borne pollutants.<sup>203</sup>

The legislature authorized the Department of Community Affairs ("DCA") to "offer and accept the use of emergency planning, training, and response-related Supplemental Environmental Projects, consistent with the guidelines established by the United States Environmental Protection Agency,"<sup>204</sup> in the exercise of DCA's enforcement authority. In furtherance of the "overarching goal" of environmental justice, the US EPA's SEP guidelines encourage the targeting of "SEPs in communities where environmental justice concerns are present."<sup>205</sup> Accordingly, the Florida SEP program incorporates environmental justice principles by reference.

### Case

#### Rowe v. Oleander Power Project, L.P. (1999)

Oleander proposed to build and operate an electrical power plant, and applied for an air construction permit from the Florida DEP. DEP issued the permit, against which the Petitioner filed an administrative challenge based on allegations of "environmental injustice" under federal law.<sup>206</sup> The environmental justice allegations raised issues of federal law beyond the scope of the state permit review proceedings.<sup>207</sup>

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## GEORGIA

### Statutes

#### Anti-Concentration Law for Solid Waste Facilities

Georgia prohibits municipal solid waste disposal facilities from being located within a city or county, or within one half mile of a city or county's border, without that entity's permission.<sup>208</sup> The state also limits the number of solid waste facilities that may be sited within a given area.<sup>209</sup> Before siting a solid waste disposal facility, there must first be "at least one public meeting to discuss waste management needs of the local government or region and to describe the process of siting facilities to the public."<sup>210</sup> The statute also requires the permitting agency to notify the general

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<sup>203</sup> FLA. REV. STAT. § 252.934 *et seq.* (2005).

<sup>204</sup> FLA. REV. STAT. § 252.940(d)(3).

<sup>205</sup> US EPA, *Final EPA Supplemental Environmental Projects Policy Issued*, 63 Fed. Reg. 24796 (May 5, 1998).

<sup>206</sup> Executive Order 12,898, *supra* note 21.

<sup>207</sup> *Rowe v. Oleander Power Project, L.P.*, 1999 Fla. ENV LEXIS 296 (Fla. Dep't of Env'tl. Protection Nov. 10, 1999).

<sup>208</sup> GA. CODE ANN. § 12-8-25 (2004).

<sup>209</sup> *Id.* at § 12-8-25.4.

<sup>210</sup> *Id.* at § 12-8-26(a).

public via newspaper publication of the place and time for meetings where siting decisions will occur.<sup>211</sup>

### Pending Brownfields Law

Pending state legislation seeks to enact the “Georgia Brownfields Rescue, Redevelopment, Community Revitalization, and Environmental Justice Act.” According to Senate Bill 646, “[a]n unacceptably high percentage of these brownfields properties are in, or close by, minority and low income communities where their presence and continued neglect invite crime, contribute to creeping blight, and discourage efforts by low income and disadvantaged people to clean up, stabilize, and revitalize their neighborhoods.”<sup>212</sup> The bill seeks to promote the revitalization of brownfields by establishing a Georgia Brownfields Program. The bill also provides for the creation of a Brownfields Interagency Task Force and a Brownfields Revitalization Fund.<sup>213</sup>

### **Policy**

As part of “Transit Share,” the Transportation Improvement Program (“TIP”) administered by the Georgia Regional Transportation Authority (“GRTA”) includes fiscal, land use, and environmental considerations as part of its agenda. GRTA seeks to incorporate environmental justice considerations to the early stages of its planning process. For example, the GRTA Board passed a resolution approving the FY 2001- 2003 TIP and included a Benefits and Burden analysis relating to Environmental Justice by the Atlanta Regional Commission.<sup>214</sup>

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## HAWAII

### **Statutes**

#### Resolution

In 2005, the Hawaii legislature resolved that the Environmental Council create a guidance document on how environmental justice principles may be incorporated in all phases of state’s environmental review procedures, drawing upon broad public input.<sup>215</sup>

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<sup>211</sup> *Id.*

<sup>212</sup> GA. S.B. 646 (Cagle, Mullis, 2006), *available at* [http://www.legis.state.ga.us/legis/2005\\_06//versions/sb646\\_As\\_introduced\\_LC\\_14\\_9428\\_2.htm](http://www.legis.state.ga.us/legis/2005_06//versions/sb646_As_introduced_LC_14_9428_2.htm) (last visited April 14, 2006).

<sup>213</sup> *Id.*

<sup>214</sup> Georgia Regional Transportation Authority, *Board Meeting Minutes (June 14, 2000)*, *available at* [http://www.grta.org/news\\_section/board\\_minutes/pdf\\_files\\_2000\\_2001/2000/Bd\\_Minutes\\_061400.pdf](http://www.grta.org/news_section/board_minutes/pdf_files_2000_2001/2000/Bd_Minutes_061400.pdf) (last visited Jan. 26, 2006).

<sup>215</sup> H.I. S.C.R. 140, HD 1 (2005).



### EJ Study Legislation<sup>216</sup>

In 2006, the Hawaii Legislature passed a law funding the study of environmental justice in the Hawaiian context. The law charges the University of Hawaii review the state environmental impact statement system, particularly whether existing law adequately addresses the effects of proposed actions on cultural practices of native communities. This review would further assess whether each state agency is fulfilling its duty to identify and address “any disproportionately adverse human health, environmental, or cultural effects on minority populations, Native Hawaiian, and low-income populations” resulting from agency actions.

The law also funds a consultant responsible for education and outreach activities, including gathering input for defining “environmental justice” in the context of Hawaii’s unique ethnic heritage. Debate has centered on whether “Native Hawaiian” encompasses only indigenous Hawaiians or includes other (mostly Asian) groups that lived in the islands prior to U.S. annexation.<sup>217</sup> The law further directs the consultant to develop a guidance document, articulating the role of environmental justice analysis through all phases of the environmental impact statement process. The report and guidance document have a January 2008 deadline.<sup>218</sup>

## **Policy**

### Oahu Transportation Planning

The Oahu Metropolitan Planning Organization (“OMPO”) was originally established by the Hawaii Legislature in 1975 to advise both the Honolulu City Council and the Legislature about transportation planning on the island of Oahu.<sup>219</sup> OMPO continues to perform this advisory role by developing integrated plans to assist several transportation agencies in the state.<sup>220</sup> OMPO seeks to conform its transportation plans to principles of environmental justice, and in 2001, issued its twenty-five year Oahu Regional Transportation Plan.<sup>221</sup> The plan identifies communities with concentrations of minority populations to enable agencies to devise services that adequately serve those communities’ needs. In preparation for the report, OMPO surveyed communities for feedback on proposed transportation services and projects, and forums were held for the discussion of proposed road projects that would directly affect minority neighborhoods.<sup>222</sup>

In addition to the Oahu Regional Transportation Plan, OMPO issued a report entitled *Environmental Justice in the OMPO Planning Process* that “evaluated the effectiveness of the metropolitan planning process in meeting Title VI and environmental justice requirements and implemented a process to analyze the distribution of benefits and impacts of planned investments.”<sup>223</sup> This report

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<sup>216</sup> H.I. S.B. 2145, HD 2 (2006).

<sup>217</sup> Telephone interview with Genevieve Salmonson, Director, Hawaii Health Dep’t, Office of Environmental Quality Control (March 21, 2003).

<sup>218</sup> Electronic mail from Genevieve Salmonson, Director, Hawaii Health Dep’t, Office of Environmental Quality Control (March 21, 2007).

<sup>219</sup> Oahu Metropolitan Planning Organization, *What is OMPO?*, <http://oahumpo.org/Home/about.html> (last visited May 28, 2005).

<sup>220</sup> *Id.*

<sup>221</sup> Oahu Metropolitan Planning Organization, *Environmental Justice in the OMPO Planning Process: Defining Environmental Justice Populations*, 2004 update available at <http://oahumpo.org/T6EJ/Final2001/2004Update.pdf> (last visited May 28, 2005).

<sup>222</sup> *Id.* at 5-18.

<sup>223</sup> *Id.*



was updated in 2004 after an examination of the implications of the federal definition of “environmental justice” on the unique nature of Hawaii’s ethnic and socioeconomic makeup. OMPO employs a methodology for identifying environmental justice communities that it believes is “particularly appropriate for racially diverse areas whose population is a majority minority.”<sup>224</sup> The report describes the methodology and concludes that around 18% of Oahu “block groups” are environmental justice areas.<sup>225</sup>

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## IDAHO

### Opportunities for Public Participation

The Idaho Department of Environmental Quality (“DEQ”) does not have a formal environmental justice policy, but provides structured opportunities for public input, generally. Interested citizens may serve on committees to advise DEQ on issues, including environmental justice. Some committees require a long-term time commitment, while others have more sporadic sessions. Committee meetings are open to the public.<sup>226</sup>

Airshed Advisory Groups provide citizen input as site-specific plans are developed, to manage regions that are classified by US EPA as air quality non-attainment areas.<sup>227</sup> A nonattainment area is “[a]n area with persistent air quality problems” that “violates federal health-based standards for outdoor air pollution.”<sup>228</sup> Site-specific plans must be developed and implemented for these areas to bring pollutant levels in line with US EPA’s National Ambient Air Quality Standards.

Moreover, watershed advisory groups (“WAGs”) and basin advisory groups (“BAGs”) “provide information and advice to DEQ on water quality issues and objectives in specific areas of the state.”<sup>229</sup> “The DEQ director appoints BAG members who represent a cross-section of interests in the basin, such as agriculture, forestry, municipalities, industry, recreation, Native American tribes, and environmental interests.”<sup>230</sup> “WAGs provide guidance on specific watersheds, whereas BAGs

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<sup>224</sup> *Environmental Justice in the OMPO Planning Process*, *supra* note 221, at 4.

<sup>225</sup> *Id.*

<sup>226</sup> Idaho Dep’t of Environmental Quality, “Public Info. and Input: Get Involved/Participate,” <http://www.deq.state.id.us/public/participate.cfm#committee> (last visited Feb. 1, 2006).

<sup>227</sup> *Id.*

<sup>228</sup> Idaho Dep’t of Environmental Quality, “Air Monitoring Overview: How DEQ Assesses Air Quality,” [http://www.deq.state.id.us/air/data\\_reports/monitoring/overview.cfm#AttvNon](http://www.deq.state.id.us/air/data_reports/monitoring/overview.cfm#AttvNon) (last visited Feb. 1, 2006).

<sup>229</sup> “Public Info. and Input,” *supra* note 226; Idaho Code §§ 39-3613 - 39-3616.

<sup>230</sup> “Public Info. and Input,” *supra* note 226.

provide guidance on much larger basins.”<sup>231</sup> WAGs provide local public input and guidance to DEQ when developing water quality improvement plans.<sup>232</sup>

Perhaps most significantly, members of environmental justice communities may be included on advisory committees providing input during negotiated rulemaking, an “optional process in which all interested parties and DEQ seek a consensus on the content of a rule.”<sup>233</sup> DEQ uses negotiated rulemaking if feasible, in devising regulations to implement environmental statutes. Inclusion on these committees could provide members of environmental justice communities with an opportunity to provide the community’s perspective at the critical stage of shaping environmental regulations, and supply a counterweight to the viewpoints of industry groups.

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## **ILLINOIS**

### **Statute**

In making the finding that a site is a “open dumping area,” the Illinois legislature has directed the Illinois Environmental Protection Agency (“IEPA”) to consider, among other things, whether the site is in an environmental justice area. Designation of a site as an open dumping area unlocks special preventative and corrective powers for IEPA, including removal, groundwater monitoring and consensual no-cost removal of waste from private property under certain circumstances.<sup>234</sup>

### **Policy**

IEPA has issued an Interim EJ Policy.<sup>235</sup> Elements of the finalized policy are expected to include designating responsible personnel (*e.g.*, an EJ coordinator), identifying environmental justice activities, and preparing a system for reviewing incoming environmental justice concerns or inquiries.<sup>236</sup> In the meantime, the Policy identifies several interim strategies that will be taken to address environmental justice concerns, as set out below:

#### **Public Notice Hearing and Receipt of Public Comments**

This component incorporates public participation into decisions such as permitting. The Community Relations group is charged with identifying community concerns; conducting small group meetings; responding to inquiries from both the public and the media; and assisting with

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<sup>231</sup> *Id.*

<sup>232</sup> Idaho Dep’t of Environmental Quality, “Surface Water: Water Quality Improvement Plans (TMDLs)” [http://www.deq.state.id.us/water/data\\_reports/surface\\_water/tmdls/overview.cfm#BAGs](http://www.deq.state.id.us/water/data_reports/surface_water/tmdls/overview.cfm#BAGs) (last visited April 22, 2006).

<sup>233</sup> *Id.*

<sup>234</sup> 415 ILCS 5/22.15a (2006).

<sup>235</sup> Illinois Environmental Protection Agency, *Interim Environmental Justice Policy*, available at <http://www.epa.state.il.us/environmental-justice/policy.html> (last visited Feb. 1, 2006).

<sup>236</sup> *Id.*

public hearings. The Community Relations group must also compile a mailing list of “Interested and Potentially Affected Citizens.” Those on the mailing list will “receive notices of hearings on regulations, permit applications, or any other significant Agency action likely to impact the community in which the individual lives, or in which the group has expressed an interest.”<sup>237</sup>

#### Receipt of Complaint

The environmental justice officer will develop a process for “investigating, responding to, and, where appropriate, addressing EJ complaints.”<sup>238</sup> The complaint process will include a procedure whereby the permit applicant will be notified of the complaint, and asked to respond.<sup>239</sup>

#### Training Policy/Handbook

The Agency plans to develop a training/policy handbook for agency staff. In addition to training staff in the area of environmental justice, the handbook will also report recent developments in the field and in the state’s policy.<sup>240</sup> The handbook reflects IEPA’s philosophy that the concept of environmental justice is in constant evolution, so it is critical to keep agency staff informed of the latest developments in the field.

#### Office of Community Relations

Within IEPA, the Office of Community Relations was created to “to facilitate the Agency’s goal of open communication and informed public participation in the decisions and programs of the Illinois EPA.”<sup>241</sup> The Community Relations Coordinators are assigned to all the major program areas within IEPA, and their primary function is to serve as a “trusted liaison” with the public. Examples of their duties includes: (1) identifying communities that may be affected by IEPA actions, and isolating techniques for improving public participation; (2) conveying community concerns to IEPA staff; (3) facilitating information flows within IEPA; and (4) integrating geographical, social, political and economic factors into IEPA decisions.<sup>242</sup>

#### Environmental Justice Advisory Group

In 2005, the Illinois EPA created an environmental justice advisory group. The group consists of approximately ten members, consisting of academics, members of environmental groups, engineers, local government representatives, industry representatives and counsel.<sup>243</sup> The group is tasked with completing the IEPA Interim EJ policy, commenting on EJ aspects of permit drafts, and suggesting environmental improvements for EJ communities.<sup>244</sup>

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<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> Illinois Environmental Protection Agency, “Office of Community Relations,” <http://www.epa.state.il.us/community-relations> (last visited Feb. 6, 2006).

<sup>242</sup> Illinois Environmental Protection Agency, “About the Office of Community Relations,” <http://www.epa.state.il.us/community-relations/about.html> (last visited April 29, 2006).

<sup>243</sup> Illinois Environmental Protection Agency, “Illinois Environmental Justice Advisory Group,” <http://www.epa.state.il.us/environmental-justice/advisory-group.html> (last visited Feb. 6, 2006).

<sup>244</sup> Telephone interview with Ken Page, Environmental Justice Officer, Illinois Environmental Protection Agency, (Mar. 21, 2005).

## Performance Partnership Agreement

In its PPA with US EPA, IEPA agreed to specific federal enforcement and compliance assistance responsibilities including protecting at-risk populations, especially children and environmental justice communities, from disproportionate impacts of environmental hazards. In addition, the PPA seeks to ensure that all people have an adequate opportunity to participate in environmental decision making processes. The PPA indicates that US EPA Region 5 will continue working with state and local agencies in coordinating cleanup and remediation programs in EJ communities.<sup>245</sup>

## Title VII Settlement

In 1998, an Environmental Justice Complaint was filed against IEPA over the Robbins Resource Recovery Facility in Robbins, Illinois, a garbage burning facility for electricity generation.<sup>246</sup> IEPA maintains that it never violated its EJ policies and notes that the facility enjoyed support from the local community and the mayor of Robbins. The closure of the facility for lack of economic viability mooted the complaint, but IEPA nevertheless entered into a settlement agreement. IEPA is now working in conjunction with the US EPA to create more thorough grievance procedures for Environmental Justice complaints.<sup>247</sup>

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## INDIANA

Environmental justice efforts in Indiana are coordinated through the Indiana Department of Environmental Management (“IDEM”). IDEM’s 2001 “Environmental Justice Strategic Plan” set out the state’s goals of 1) identifying geographic areas of environmental justice concern, and 2) creating an interagency approach to ensure meaningful and active public participation.<sup>248</sup> In 2005, a change in administration resulted in a “moratorium”<sup>249</sup> on the EJ programs, while the new administration underwent a “reevaluation of past directions” in order to align them with the new Governor’s priorities.<sup>250</sup> After weighing whether IDEM would maintain separate environmental justice staff or if environmental justice issues would become an aspect of other IDEM employees’

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<sup>245</sup> Illinois Environmental Protection Agency, *FY 2003 Performance Partnership Agreement Between Illinois EPA and Region 5 US EPA*, at 9-10, available at <http://www.epa.state.il.us/ppa/ppa-fy2003.pdf> (last visited Feb. 6, 2006).

<sup>246</sup>Telephone interview with Christopher Presnoel, Staff Attorney, Illinois Environmental Protection Agency, (March 24, 2005).

<sup>247</sup>*Id.*

<sup>248</sup> National Academy of Public Administration, *Models for Change: Efforts by Four State to Address Environmental Justice*, *supra* note 191, at 39-41.

<sup>249</sup>Telephone interview with Dana Wise, former Environmental Justice Coordinator, Indiana Dep’t of Environmental Management (March 23, 2005).

<sup>250</sup>Telephone interview with Tanya McDonald, Complaint Coordinator, Indiana Dep’t of Environmental Management (May 5, 2005).

portfolios,<sup>251</sup> in January of 2006, IDEM issued its new environmental justice policy.<sup>252</sup> The new policy affirms the importance of having dedicated EJ staff and procedures that ensure meaningful participation of affected populations, particularly those without technical expertise or fluent English language skills.<sup>253</sup>

## Policy and Programs

### Mapping “Indiana Areas of Potential Concern”

Using the 2000 U.S. Census data, IDEM has created four maps that identify potential areas of environmental concern based on factors such as race and income.<sup>254</sup> In addition to identifying low-income and minority residents, IDEM has used Geographic Information Systems (“GIS”) mapping software to collect information regarding the locations of Superfund sites, hazardous waste facilities, and major air and water permits.<sup>255</sup> By providing a visual display which links the proximity of low-income and minority residents to environmental hazards, IDEM staff and the public at large become more aware of the environmental justice issues faced by particular communities.

### Guide for Citizen Participation

In order to provide the most effective programs to address environmental justice concerns, IDEM developed the *Guide for Citizen Participation*.<sup>256</sup> The purpose of the guide is to provide residents with information regarding state and federal environmental laws in a reader friendly format. Moreover, in an effort to maximize access to this important information, IDEM has made the guide available both in hard copy and electronically. The guide is published in Spanish as well as English in order to maximize the number of Indiana residents who can meaningfully utilize the information.<sup>257</sup> The guide is a tool designed to help state residents participate in the making of environmental statutes and regulations, and permitting decisions.

### Environmental Justice Policy (2006)

IDEM issued its new policy in January of 2006, with the express goal of ensuring that the agency “treat all members of the public equally and fairly in the conduct of .... public outreach, education and decision making activities.”<sup>258</sup> The policy’s stated goals are ensuring that the public has 1) “equal access” to pertinent information, 2) “adequate notice” regarding IDEM processes, and 3) the opportunity to comment on agency decisions. The policy represents a slight shift away from special solicitude for minority and low income populations; rather, it promotes the ideal of

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<sup>251</sup> *Id.*

<sup>252</sup> Indiana Dep’t of Environmental Management, *Environmental Justice Policy* (Jan. 31, 2006), available at [http://www.in.gov/idem/your\\_environment/community\\_involvement/ej/ejintpolicy.pdf](http://www.in.gov/idem/your_environment/community_involvement/ej/ejintpolicy.pdf) (last visited Sept. 3, 2006).

<sup>253</sup> Although IDEM is responsible for implementing environmental justice programs and policies, the state’s air, water and waste boards retain the authority to issue rules in their respective areas. According to IDEM staff, this structure “limits their ability to modify or adopt new, cross-cutting rules to address environmental justice, either substantively or procedurally.” *Models for Change*, *supra* note 191, at 38.

<sup>254</sup> Indiana Dep’t of Environmental Management, “IDEM’s Environmental Justice Program,” <http://www.in.gov/idem/environmentaljustice/> (last visited Feb. 6, 2006)

<sup>255</sup> Indiana Dep’t of Environmental Management, “IDEM - Land – GIS,” <http://www.in.gov/idem/land/gis/> (last visited March 3, 2006)

<sup>256</sup> Indiana Dep’t of Environmental Management, *IDEM’s Environmental Guide to Public Participation*, available at <http://www.in.gov/idem/guides/publicparticipation> (last visited Feb. 6, 2006).

<sup>257</sup> *Id.*

<sup>258</sup> *Environmental Justice Policy*, *supra* note 247, at 1.

participatory democracy for all affected populations. For instance, the policy simply restates IDEM's general commitment to make information accessible to the public. Of special note, though, is the policy's requirement that IDEM set up channels for accepting comments in languages other than English, and that the comments reach agency representatives "knowledgeable about and sensitive to local conditions in the area affected by the activity."<sup>259</sup> Further, IDEM should respond to the comments in the same language as in the original comment. Finally, the policy dictates that IDEM provide "opportunity for members of the public to obtain expertise on technical issues before commenting."

## **Brownfields**

In May 2003, IDEM updated its *Brownfield Redevelopment Resource Guide*.<sup>260</sup> While most states' Brownfields programs make little effort to ensure that redevelopment efforts do not adversely affect EJ populations, the Indiana guide mentions environmental justice as a key concern.<sup>261</sup> The guide, however, does not make any substantive recommendations for incorporating environmental justice techniques or practices into the program.

## **Performance Partnership Agreement**

The most recent PPA does not mention "environmental justice."<sup>262</sup> In the prior PPA, IDEM agreed to undertake the formation of an advisory committee and processes to inform department staff of EJ issues.<sup>263</sup> In addition, IDEM promised to familiarize staff with the environmental burdens on minority and low-income populations; increase meaningful public input on environmental decisions and facilitate dispute resolution among parties to environmental decisions.<sup>264</sup>

## **Contact**

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## **IOWA**

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Iowa as of March 2007.

## **Contact**

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<sup>259</sup> *Id.* at 3.

<sup>260</sup> Indiana Dep't of Environmental Management, *Indiana Brownfields Redevelopment Resource Guide* (2003), available at <http://www.in.gov/idem/land/brownfields/pdf/files/guidance/resourceguide.pdf> (last visited Feb. 6, 2006).

<sup>261</sup> *Id.* at 15.

<sup>262</sup> *Environmental Performance Partnership Agreement between Indiana Department of Environmental Management and U.S. Environmental Protection Agency Region 5 (2005-07)*, available at <http://www.in.gov/idem/publications/enppa/index.html> (last visited April 22, 2006).

<sup>263</sup> *Indiana Environmental Performance Partnership Agreement, Section 2: State/Federal Relationship, Part III: Environmental Justice*, at 253, formerly available at <http://www.in.gov/idem/enppa/enppa.pdf> (last visited Aug. 10, 2003).

<sup>264</sup> *Id.*

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## **KANSAS**

The authors did not find any relevant environmental justice policies or statutes for the state of Kansas. The Kansas Department of Health and Environment (“KDHE”) has a Brownfields Targeted Assessment program, which prioritizes properties that have environmental justice issues.<sup>265</sup> The assessments consist of investigations and site inspections to quantify environmental hazards, in order to encourage potential purchasers to redevelop abandoned and brownfields sites by providing a better idea of environmental costs in redevelopment.

### **Contact**

Kansas Department of Health and Environment  
Telephone: (785) 296-1500  
Website: <http://www.kdhe.state.ks.us>

## **KENTUCKY**

### **Statute**

#### **Hazardous Waste Permits**

Before granting a permit for the storage, treatment, recycling, or disposal of hazardous waste, the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board must consider the “social and economic impacts of the proposed action on the affected community, to include, at a minimum, changes in property values, community perception and other psychic costs, and the costs and availability of public services, facilities and improvements required to support the facility and protect public health, safety, and the environment.”<sup>266</sup> This provision also applies to the construction or operation of a regional integrated waste treatment and disposal demonstration facility.<sup>267</sup>

### **EPA Partnership**

The Kentucky Department of Environmental Protection has worked with US EPA Region 4 to create demographic maps of hazardous waste sites and permit areas, for the purpose of tracking any trends or patterns relating hazardous waste sites to areas of low or modest income. The maps focus largely on the economic rather than racial characteristics of communities.<sup>268</sup>

### **Contact**

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Website: <http://www.dep.ky.gov/>

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<sup>265</sup> Kansas Dep’t of Health and the Environment, “Kansas Brownfields Program,” [http://www.kdheks.gov/brownfields/targeted\\_assess\\_prog.html](http://www.kdheks.gov/brownfields/targeted_assess_prog.html) (last visited Feb. 22, 2007).

<sup>266</sup> KY. REV. STAT. ANN. § 224.46-520 (1)(c) (2002).

<sup>267</sup> KY. REV. STAT. ANN. § 224.46-830 (2)(a) (2002).

<sup>268</sup> Telephone interview with Michael Welch, Kentucky Dep’t of Environmental Protection, Waste Permitting (Feb. 24, 2005).



## **LOUISIANA**

### **Statute**

#### **Environmental Justice Study**

An environmental justice provision was added to Louisiana's statutes in 1997.<sup>269</sup> The statute required LDEQ to "examine and study the relationship between the emission of air pollutants and the discharge of wastes by facilities located in or near residential areas."<sup>270</sup> Specifically, LDEQ must determine the amount of such emissions and discharges (including permitted and unpermitted emissions and discharges) in each residential area and set out any correlations that may exist.<sup>271</sup>

However, the statute placed restrictions on the funding of the study, prohibiting LDEQ from commencing work on the study of potential environmental injustice until the legislature specifically allocates funds for such a purpose. Moreover, the statute admonishes LDEQ that it "shall not direct existing funds or fees from other budgeted programs to fund this study, but may provide in-kind services to match any federal grants received."<sup>272</sup>

### **Executive Order**

In 1998, the governor issued an executive order to address environmental justice in the parishes bordering the Mississippi River Corridor, encompassing the area from Baton Rouge to New Orleans.<sup>273</sup> At that time, the area had the highest level of permitted releases in the State.<sup>274</sup> The executive order created the Mississippi River Corridor Task Force to hold public discussions and dialogue on EJ issues in the river corridor. One of the duties of the Task Force was to identify "the types of adverse human health and environmental issues which may arise as a result of new permits applications to build, construct, or expand a commercial or industrial project."<sup>275</sup> The Task Force was also charged with making recommendations to the governor and submitting two written reports.

### **Programs and Services**

#### **Community Industry Relations**

The Community Industry Relations program ("CIR") has replaced the environmental justice program at LDEQ. Still housed within LDEQ, CIR is primarily responsible for handling environmental justice for Louisiana. The purpose of CIR is to facilitate communication and ease tensions that may arise between industry and members of the community. CIR becomes involved in environmental justice issues when community residents express concern over the potential negative health effects caused by their close proximity to certain industries. Once a concern has been identified, "CIR will step into a situation when there is a need to establish dialogue between two or

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<sup>269</sup> See LA. REV. STAT. ANN. § 30:2011.2 (West 2003).

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> Exec. Order MJF 98-1, Mississippi River Corridor Task Force (Jan. 7, 1998) *available at* <http://www.state.la.us/osr/other/mjf99-8.htm> (last visited Feb. 6, 2006).

<sup>274</sup> See 1998 Louisiana Toxic Release Inventory Report, at 29, *available at* <http://www.deq.louisiana.gov/portal/Portals/0/evaluation/TRI/1998/TRI.pdf> (last visited Feb. 14, 2006) (toxic Release Inventories for other years *available at* <http://www.deq.louisiana.gov/portal/tabid/105/Default.aspx>).

<sup>275</sup> Exec. Order MJF 98-1, *supra* note 273.



more parties. If the parties agree to talk, CIR establishes a community/industry Panel to get discussion moving forward.”<sup>276</sup>

If the location or activity of the industry raises concerns for the neighboring community, CIR will arrange for representatives from the Department of Health and Hospitals to speak with community members regarding their concerns. In addition to dealing with community members, CIR also “advises companies trying to locate in the state to have small meetings throughout the communities that they are trying to work in.”<sup>277</sup>

### Brownfields Redevelopment Initiatives

Although the Louisiana brownfields redevelopment initiative does not directly address environmental justice, the initiative does promote the cleanup and redevelopment of inactive or underutilized properties which tend to most often be in economically depressed areas and inner-cities, or older urban neighborhoods which often have higher proportions of minority, low-income, and economically depressed citizens. Through its Voluntary Remediation, Targeted Brownfields Assessment, and Revolving Loan Fund Programs, as well as its technical and educational assistance to local brownfields redevelopment programs, LDEQ seeks to facilitate economic development, new jobs, and increased tax base by promoting the cleanup and reuse of idled brownfields properties.<sup>278</sup>

### EJ Study

The state of Louisiana began addressing the issue of environmental justice in 1992 when the Louisiana Department of Environmental Quality (“LDEQ”) developed a “conceptual approach to Environmental Justice” and contracted with Louisiana State University for an environmental equity study.<sup>279</sup> Between 1994 and 1996, Louisiana created an Environmental Justice Panel Process in several communities.<sup>280</sup> The Environmental Justice Panels were designed to facilitate communication between industries and communities.<sup>281</sup>

## **Cases**

### *N. Baton Rouge Environmental Association (2001)*

Plaintiffs challenged the permit issued for a new polypropylene facility at the site of an old Exxon plant, claiming “environmental racism” in the plant’s location next to the city of Alsen.<sup>282</sup> The court held that the area was zoned as industrial long ago, and there was no evidence of intentional discrimination. The court found it relevant that the new plan would produce less pollution than the older facility. Plaintiffs further charged that the LDEQ failed to comply with state common law rule requiring the agency “to respond to all reasonable public comments”

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<sup>276</sup> Louisiana Dep’t of Environmental Quality, Environmental Update – Winter 2001, *Community/Industry Relations Section Finds Solutions*, at 4, *formerly available at* <http://www.deq.state.la.us/news/envupd/2001winter> (last visited Oct. 2, 2003).

<sup>277</sup> *Id.*

<sup>278</sup> Telephone interview with Nathan Levy, Ombudsman, Louisiana Dep’t of Environmental Quality (Apr. 6, 2005).

<sup>279</sup> Louisiana Dep’t of Environmental Quality, “Community-Industry Relations Group, “Chronology and Accomplishments” (Nov. 2000) (on file with authors).

<sup>280</sup> *Id.*

<sup>281</sup> National Conference of State Legislatures, Environmental Justice Group, *Environmental Justice: A Matter of Perspective* (Sept. 1995) (on file with authors).

<sup>282</sup> *N. Baton Rouge Envtl. Ass’n v. La. Dep’t of Envtl. Quality*, 805 So. 2d 255, 262-63 (La. Ct. App. 2001).

regarding a proposed Exxon facility; the court disagreed, holding that LDEQ's solicitation of a response by Exxon to environmental racism claims was sufficient.

#### Dow Chemical (2004)

The court affirmed LDEQ's grant of a corporation's air permit modifications and the emission credit application, over plaintiffs' challenge.<sup>283</sup> Under Louisiana law established by the seminal case of *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, the Supreme Court of Louisiana found a constitutional duty to consider the effects of permitting actions on the environment, and whether "adverse effects have been minimized or avoided as much as possible consistent with the public welfare."<sup>284</sup> The court found that LDEQ's analysis of effect, mitigating measures, and environmental justice/civil rights issues as meeting the constitutional mandate.

#### **Contact**

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### **MAINE**

#### **Policies**

Maine does not have a formal environmental justice program or policy. The Maine Department of Environmental Protection increases awareness of environmental justice issues by conducting trainings for staff on the meaning of fairness and disparate impacts in the environmental regulatory process, and ensuring that its permitting and regulatory decision making are open and inclusive of all public interests.<sup>285</sup>

#### **Contact**

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### **MARYLAND**

#### **Statutes**

##### **MACEJ**

In 1997, Maryland enacted House Bill 1350, establishing the Maryland Advisory Council on Environmental Justice ("MACEJ").<sup>286</sup> MACEJ's mission is to develop and examine recommendations on environmental justice policy and direction. Maryland has adopted a working model for decision making from the National Conference of State Legislators, and MACEJ has created three subcommittees to provide general and expert assistance. The particular subcommittees

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<sup>283</sup> *Dow Chem. Co. v. Reduction Credits*, 885 So. 2d 5, 23 (La. Ct. App. 2004).

<sup>284</sup> *Id.*, citing *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So. 2d 1152 (La. 1984).

<sup>285</sup> Telephone interview with Brooke E. Barnes, former Deputy Commissioner, Maine Dep't of Environmental Protection (April 22, 2003).

<sup>286</sup> MD. CODE ANN., Art. 41, § 18-315 (2003).

focus on (1) public outreach, education and participation; (2) state and local interagency coordination; and (3) environmental health concerns and research.<sup>287</sup>

### Anne Arundel County Moratorium

In addition to HB 1350, Maryland also passed House Joint Resolution 6 in January 2000.<sup>288</sup> This resolution addressed environmental justice concerns within Anne Arundel County. The resolution requires the Department of the Environment, in consultation with the MACEJ, to develop a plan to promote environmental justice in Anne Arundel County because of its high cancer mortality rate. Further, the resolution states that additional industrial activity should not be allowed to proceed in the county and that no further environmental permits should be issued in designated areas of concern.<sup>289</sup>

### Children's Environmental Health

Pursuant to the recommendation of the MACEJ Advisory Council, the Legislature created an Advisory Council to address the environmental health needs of children.<sup>290</sup> The Legislature recognized that “[h]igher rates of poverty are one of the factors that place children of ethnic and minority communities at disproportionate risk for environmental exposures, due to inadequate housing, poor nutrition, and limited access to health care.”<sup>291</sup> The Advisory Council was given the tasks of identifying environmental hazards that may affect children's health and recommending solutions to those hazards through interdisciplinary problem solving and coalition building.<sup>292</sup>

## **Programs and Services**

### Commission on Environmental Justice and Sustainable Communities

In March 2001, former Governor Paris Glendening created Maryland's Commission on Environmental Justice and Sustainable Communities (“EJ Commission”) by executive order.<sup>293</sup> The EJ Commission is comprised of fifteen members appointed by the governor from the following: affected communities concerned with environmental justice, business organizations, environmental organizations, health experts on environmental justice, local government, and the general public with interest or expertise in environmental justice.<sup>294</sup> The EJ Commission was authorized to operate for two and a half years to facilitate environmentally safe and sustainable communities for all Maryland residents.

The EJ Commission's mandate included: (1) advising state agencies on environmental justice and related community issues; (2) assessing the adequacy of State and local government laws and regulations to address the issue of environmental justice and sustainable communities; and (3) developing criteria to assess whether communities of the State may be experiencing environmental

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<sup>287</sup> *Id.*

<sup>288</sup> H.R.J. Res. 6, 2000 Leg., 414th Sess. (Md. 2000).

<sup>289</sup> *Id.*

<sup>290</sup> MD. HEALTH-GEN. CODE § 13-1502 (2005).

<sup>291</sup> *Id.* at § 13-1502 (a)(3).

<sup>292</sup> *Id.* at § 13-1502 (b)(2).

<sup>293</sup> Exec. Order No. 01.01.2001.01, “Commission on Environmental Justice and Sustainable Communities” (Mar. 9, 2001), *reprinted in* 28-7 Md. Reg. 674 (April 6, 2001).

<sup>294</sup> *Id.*

justice issues.<sup>295</sup> In 2003, the legislature's HB 970 permanently extended the charter of EJ Commission, which will continue to make annual reports to the Governor's office. Other duties include assessing the impact of state laws and policies on environmental justice, as well as advising the Governor and state agencies about environmental justice issues.<sup>296</sup>

The 2004 report explained that during the past three years, the EJ Commission had investigated community concerns through meetings, workgroup sessions, public dialogues, hearings and citizens' feedback.<sup>297</sup> Additionally, the EJ Commission researched and developed a community profile tool that will help stakeholders identify environmental justice communities and issues. The Maryland Department of the Environment ("MDE") is currently looking for funds to finish the research and educate the public about the new community profile tool.<sup>298</sup>

### Environmental Benefit Districts

In 2003, MDE established environmental benefit districts ("EBDs"). EBDs are communities identified as disadvantaged based on environmental, health, or economic factors.<sup>299</sup> The MDE website explains that the EBD concept "acknowledges that many of the needed programs to protect and revitalize communities are in existence, albeit not focused or coordinated in some cases. EBDs provide the geographic focus and needs identification to make some existing programs more successful."<sup>300</sup> Communities designated as EBDs may be entitled to some MDE resources and other state resources. The 2004 installation of pollution control devices on school buses in Montgomery and Prince George's counties is an example of a recent project in EBD communities.<sup>301</sup>

### Maryland Department of Transportation's Assessment Tool

The Maryland Department of Transportation has issued Environmental Justice Guidelines for the State's Highway Administration Projects ("Guidelines"). The Guidelines are meant to provide project teams with the framework to analyze environmental justice issues within the transportation decision making framework. The Guidelines offer direction for project teams in areas such as public outreach, assessment of disproportionately high and adverse impacts, and identification of minority and low-income populations.

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<sup>295</sup> Maryland Commission on Environmental Justice & Sustainable Communities, *Final Report and Recommendations* (Dec. 2002) ["*Annual Report* (2002)"], available at [http://www.mde.state.md.us/assets/document/environmental\\_justice/ej\\_2002\\_Annual\\_Report.pdf#page=3](http://www.mde.state.md.us/assets/document/environmental_justice/ej_2002_Annual_Report.pdf#page=3) (last visited Nov. 7, 2005).

<sup>296</sup> 2003 Md. Laws 460, codified at MD. ENV. CODE ANN. § 1-701.

<sup>297</sup> Maryland Commission on Environmental Justice and Sustainable Communities, *Annual Report* (2004), [http://www.mde.state.md.us/assets/document/environmental\\_justice/ej\\_2004\\_Annual\\_Report.pdf](http://www.mde.state.md.us/assets/document/environmental_justice/ej_2004_Annual_Report.pdf) (last visited Nov. 7, 2005).

<sup>298</sup> Telephone interview with Dorothy Morrison, Environmental Justice Coordinator, Maryland Dep't of the Environment (Nov. 1, 2005).

<sup>299</sup> *Id.*; students of Smart Growth will likely recognize the model for EBDs in Maryland's Priority Funding Areas, which receive the bulk of state infrastructure spending, in exchange for their meeting smart growth targets for population density and repurposing of existing infrastructure.

<sup>300</sup> Maryland Dep't of the Environment, "Environmental Justice in Maryland," [http://www.mde.state.md.us/Programs/MultimediaPrograms/Environmental\\_Justice/implementation/details.asp#calendar](http://www.mde.state.md.us/Programs/MultimediaPrograms/Environmental_Justice/implementation/details.asp#calendar) (last visited Feb. 6, 2006).

<sup>301</sup> "Environmental Initiative Will Reduce School Bus Emissions In Prince George's and Montgomery Counties," (Nov. 6, 2003), available at <http://www.mde.state.md.us/PressReleases/574.html> (last visited Nov. 7, 2005).

The Guidelines indicate that when an environmental justice issue has been identified and all of the options have been considered, “the No-Build alternative must be carefully considered... it’s possible that not building transportation improvements could impact minority or low-income populations. A clearly written description of all EJ findings must be included in the environmental document.”<sup>302</sup>

Public outreach is emphasized in the Guidelines as a critical part of the decision making process. Accordingly, the Guidelines advise transportation planners that “to be effective, your public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process.”<sup>303</sup> The Guidelines emphasize that public outreach should occur and public participation should be integrated at every stage of the planning process. In particular, the Guidelines address the importance of breaking traditional communication barriers that might otherwise exclude certain populations from participating in the process.

The Guidelines stress public outreach as a critical ingredient in environmental decision making. Accordingly, they advise transportation planners that “to be effective, your public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision making process.”<sup>304</sup> The Guidelines emphasize that public outreach should occur and public participation should be integrated at every stage of the planning process. In particular, the Guidelines address the importance of breaking traditional communication barriers that might otherwise exclude certain populations from participating in the process.

Finally, the Guidelines instruct transportation planners to consider and identify the disproportionately high and adverse impacts that their planning decisions may have. The Guidelines underscore that there is no “cookie-cutter” definition of a disproportionate or adverse impact to a community. Although the Guidelines offer several impacts that should be considered, it warns that the list is not dispositive. Included in the list of adverse effects are “human health, the natural and social environment, the economy, community function . . . [and] also includes the denial, reduction or delay in receiving benefits.”<sup>305</sup>

## **Community Participation and Processes**

### Community Index Workgroup

In an effort to reach out to members of communities that are affected by environmental injustice, the EJ Commission has created a Community Index Workgroup. The group’s main goal is to develop a strategy to identify communities that are disproportionately affected by environmental conditions.<sup>306</sup> To this end, the EJ Commission will develop “sample criteria as a basis for determining if a community is disproportionately environmentally stressed and use[] the results of

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<sup>302</sup> U.S. Federal Highway Admin., *Environmental Justice Guidelines for MD State Highway Administration Projects*, at 3, available at [http://www.fhwa.dot.gov/mddiv/EJ\\_Guidelines.pdf](http://www.fhwa.dot.gov/mddiv/EJ_Guidelines.pdf) (last visited Nov. 7, 2005).

<sup>303</sup> *Id.* at 4.

<sup>304</sup> *Id.* at 4.

<sup>305</sup> *Id.* at 12.

<sup>306</sup> Maryland Commission on Environmental Justice and Sustainable Communities, *Annual Report*, Appendix C, at 2 (Dec. 2001), available at [http://www.mde.state.md.us/assets/document/environmental\\_justice/ejreport99/appendix\\_c.pdf](http://www.mde.state.md.us/assets/document/environmental_justice/ejreport99/appendix_c.pdf) (last visited Nov. 7, 2005).

this analysis as a means to better understand and communicate potential health and environmental risk to stakeholders.”<sup>307</sup>

According to the EJ Commission’s 2002 report, community residents continue to express concerns about perceived environmental injustices within the state. The EJ Commission conducted several public meetings throughout the state where community members “raised several concerns about potential EJ issues such as lead poisoning, increasing asthmatic levels and other respiratory concerns, communication, infrastructure needs . . . limited regulatory protection [and] public involvement and outreach.”<sup>308</sup> In order to address the concerns expressed during the public meetings, the EJ Commission made several recommendations to state and local agencies to incorporate environmental justice principles into their programs and public participation into their decision making framework.<sup>309</sup>

The EJ Commission, in conjunction with the MDE and US EPA, convened a series of Environmental Equity Hearings (“Hearings”) in 2003 and 2004.<sup>310</sup> The purpose of the Hearings was to provide a forum for citizens, community organizations, neighborhood groups, and local leaders to provide advice and direction to various levels of government on environmental policies and processes that may have an impact on minority and/or low income families and other affected communities throughout Maryland. From the Hearings, officials have identified some critical environmental issues facing local communities and best practices for incorporating these concerns into state agency decision making. Issues mentioned include concerns about lead poisoning, brownfields, and economic disadvantage. The next dialogue is set to take place in 2006.<sup>311</sup>

### **Performance Partnership Agreement**

Maryland’s PPA states “[no] person or group of people should shoulder a disproportionate share of adverse environmental impacts as a result of the execution of environmental policies, programs, or initiatives. The Partners are committed to working together to develop programs, activities, and initiatives in the state of Maryland that are consistent with the principles of environmental justice, that build capacity within communities, and that enhance the level of cooperation and understanding with regard to environmental justice.”<sup>312</sup>

### **Contact**

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<sup>307</sup> *Id.*

<sup>308</sup> *Annual Report* (2002), *supra* note 295, at 6.

<sup>309</sup> *Id.* at 9-10.

<sup>310</sup> “Environmental Justice in Maryland,” *supra* note 300.

<sup>311</sup> Telephone Interview with Dorothy Morrison, *supra* note 298.

<sup>312</sup> *Maryland’s FY 2001 & 2002 Environmental Partnership Agreement*, at 4, available at <http://www.mde.state.md.us/assets/document/enpa/enpa2001-2002.pdf> (last visited Nov. 7, 2005).

## **MASSACHUSETTS**

### **Policies**

The Massachusetts Executive Office of Environmental Affairs (“MEOEA”) Environmental Justice Coordinator estimates that 28% of the state’s population is affected by environmental justice issues.<sup>313</sup> In 2002, MEOEA adopted an Environmental Justice Policy that defines EJ populations as “those segments of the population that MEOEA has determined to be most at risk of being unaware of or unable to participate in environmental decision making or to gain access to state environmental resources.”<sup>314</sup> The Environmental Justice Policy prioritizes EJ communities for: (1) clean-up funds for hazardous waste sites; (2) environmental inspections and enforcement actions; and (3) heightened scrutiny of industrial facilities and air emissions. The policy encourages the creation of open space within areas inhabited by EJ populations, and increases opportunities for community members to participate in environmental decision making.<sup>315</sup>

The policy expedites the issuing of permits for companies intending to redevelop brownfields. Borrowing a technique from the “smart growth” movement, this policy also provides “bonus credit” to municipalities for grant programs, enforcement actions, “or any other resources prioritized or focused on neighborhoods where EJ populations reside.”<sup>316</sup> MEOEA has translated its environmental justice policy into seven languages, and made them available on its website.<sup>317</sup>

The policy is updated every three years. In 2005, the policy underwent public comment, and recommendations were made for the update.<sup>318</sup>

### **Programs and Services**

#### **Alternative Media Outlets and EJ Mailing List**

MEOEA’s Environmental Justice Coordinator, Tony Chaves, points to some specific and immediate plans for EJ outreach efforts to implement the state’s policy.<sup>319</sup> In recognition of the fact that EJ populations may not have ready access to the Internet and MEOEA’s website, MEOEA plans to compile an “EJ Mailing List” to reach interested members in EJ communities.<sup>320</sup> In

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<sup>313</sup> Telephone interview with Tony Chaves, Environmental Justice Coordinator, Massachusetts Office of Environmental Affairs, (Mar. 21, 2006).

MEOEA is the umbrella entity controlling the Departments of Agricultural Resources, Conservation and Recreation, Environmental Protection, and Fish & Game; as a result, MEOEA’s EJ policy is one of the nation’s most comprehensive in terms of jurisdictional sweep, aside from the handful of state executive orders and comprehensive EJ statutes (California, for example).

<sup>314</sup> For an area to be considered an environmental justice community, the median annual household income for that area must be at or below 65 percent of the statewide median income for Massachusetts; *or* 25 percent of the residents are minority; *or* 25 percent of the residents are foreign born, *or* 25 percent of the residents are lacking English language proficiency. *Environmental Justice Policy of the Executive Office of Environmental Affairs*, at 5, available at [http://www.mass.gov/envir/ej/pdf/EJ\\_Policy\\_English.pdf](http://www.mass.gov/envir/ej/pdf/EJ_Policy_English.pdf) (issued Oct. 2002) (last visited March 20, 2006).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 5-6.

<sup>317</sup> See Executive Office of Environmental Affairs, Environmental Justice, <http://www.state.ma.us/envir/ej/> (last visited March 20, 2006).

<sup>318</sup> Telephone interview with Tony Chaves (2006), *supra* note 313.

<sup>319</sup> Telephone interview with Tony Chaves (Feb. 25, 2003).

<sup>320</sup> Executive Office of Environmental Affairs, *Environmental Justice Policy of the Executive Office of Environmental Affairs*, [http://www.mass.gov/envir/ej/pdf/EJ\\_Policy\\_English\\_Full\\_Version.pdf](http://www.mass.gov/envir/ej/pdf/EJ_Policy_English_Full_Version.pdf) (last visited March 20, 2006).



addition, the MEOEA's policy requires that a list of "Alternative Media Outlets" be developed to alert environmental justice populations of their opportunity to speak out regarding projects that would affect their area.<sup>321</sup> The distribution outlets for EJ literature will range from community based social service organizations to hairdressing salons.<sup>322</sup>

#### Environmental Justice Geographic Information System

MEOEA's website contains an interactive GIS mapping program that identifies all of the state's EJ populations and allows users to query the database with a standard web browser.<sup>323</sup> The state's environmental justice populations, agencies charged with implementing the state's environmental justice program, and private parties whose projects may have environmental justice ramifications all use the GIS database. Users can pinpoint and review projects submitted to MEOEA to determine if the projects affect an EJ population and consequently trigger heightened standards of review.<sup>324</sup>

#### Programs for Tribal and Indigenous Communities

MEOEA recognizes the need for Native American-specific environmental justice outreach efforts because of the special challenges facing that group, such as their higher incidence of asthma as compared to the rest of the population. The Massachusetts Urban Self-Help Program (now under the Division of Conservation Services) is responsible for outreach,<sup>325</sup> focusing its efforts on identifying and building ties with Native American populations in the state.<sup>326</sup>

#### Transportation Planning

In 2000, Massachusetts outlined its solid waste management strategy for the next decade in a policy document titled the *Beyond 2000 Solid Waste Master Plan (Beyond 2000 Plan)*.<sup>327</sup> The plan explicitly takes into account environmental justice and requires that the impact of facilities' operations relative to the cumulative impacts from all sources on health and the environment in the affected area be addressed. Furthermore, the plan indicates that the Massachusetts Department of Environmental Protection ("MassDEP") was to revise the solid waste facility site assignment regulations to include several criteria that will further protect the interests of communities near proposed solid waste facilities. The proposed regulations included "notification to communities with significant minority populations in their primary language, increased setbacks to provide larger buffers between the facilities and nearby residents, and evaluation of cumulative impacts associated with new or expanded solid waste facilities."<sup>328</sup>

Having sought to reduce waste and promote sustainable solid waste management, the *Beyond 2000 Plan's* accomplishments included "increasing Massachusetts' waste reduction rate to 55% as of 2002," and "promulgating revised Site Assignment regulations and revised Solid Waste Permitting

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<sup>321</sup> *Id.*

<sup>322</sup> Telephone interview with Tony Chaves (2003), *supra* note 319.

<sup>323</sup> Massachusetts Executive Office of Environmental Affairs, *Environmental Justice Viewer*, <http://maps.massgis.state.ma.us/EJ/viewer.htm> (last visited March 20, 2006).

<sup>324</sup> Telephone interview with Tony Chaves (2006), *supra* note 313.

<sup>325</sup> *Id.*

<sup>326</sup> Telephone interview with Joan Robes, Director of Massachusetts Urban Self-Help Program (March 7, 2003).

<sup>327</sup> Massachusetts Dep't of Environmental Protection, *Beyond 2000: Solid Waste Master Plan: Massachusetts Renews its Commitment to Waste Reduction, Recycling and Re-use* (Dec. 20, 2000), available at <http://www.mass.gov/dep/recycle/priorities/swmp.doc> (last visited March 20, 2006).

<sup>328</sup> *Id.* at 1-5.



regulations to improve facility operations and oversight.”<sup>329</sup> MassDEP is revising the *Beyond 2000 Plan*, which finished receiving public comment in November 2005. “The *2005 Plan Revision* updates the Commonwealth’s policies and strategies for managing solid waste through 2010.”<sup>330</sup>

### Air Quality

MEOEA has placed a larger emphasis on air related issues, primarily in urban areas which also tend to be EJ areas. Strategies focusing on air-related issues have been high priority in the last 2 yrs, and enforced by MassDEP. Current air quality initiatives include diesel retrofit programs and an anti-idling program for school buses.<sup>331</sup>

### **Supplemental Environmental Projects**

In the settlement of environmental enforcement cases, MassDEP may allow violators to reduce the magnitude of their assessed penalties by a percentage of the costs of an environmentally beneficial project, known as a Supplemental Environmental Project (“SEP”).<sup>332</sup> MassDEP defines SEPs as actions a regulated entity is not legally required to perform that will “improve, protect or reduce risks to public health, safety or welfare, or the environment at large.”<sup>333</sup> In exercising its discretion to approve a SEP, MassDEP will consider several factors such as whether the violator attempted to avoid non-compliance, how the violator responded to non-compliance, and the economic consequences of the non-compliance.<sup>334</sup> MassDEP’s SEP policy indicates that environmental justice is one of the overarching goals of the SEP program, though the department does not list it as a category of SEP nor consider it a formal factor in determining whether to allow a SEP.<sup>335</sup>

### **Performance Partnership Agreement**

In the 2005-2006 PPA with US EPA, MassDEP outlines strategies for meeting its goals of: (1) Clean Air, (2) Clean and Safe Water, (3) Waste Management and Clean Up of Waste Sites, and (4) Healthy Communities. To ensure healthier communities, the PPA contains a series of environmental justice initiatives, including enforcement of asbestos regulations, brownfields redevelopment, and soil and groundwater clean up, as well as waste site clean up.<sup>336</sup>

### **Cases**

Mass Port Auth. v. City of Boston, 17 Mass. L. Rep. 158 (Sup. Ct. 2003)

The City of Chelsea challenged the final environmental impact report (FEIR) assessing a proposed airport expansion and runway construction project under the Massachusetts

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<sup>329</sup> *Solid Waste Master Plan: 2005 Revision, Public Hearing Draft (Sept. 2005)*, at 2, formerly available at <http://www.mass.gov/dep/recycle/priorities/swmprev.doc> (last visited March 21, 2006). The 2006 Plan Revision is currently available on at <http://www.mass.gov/dep/recycle/priorities/swmprev.doc> (last visited Jan. 22, 2007).

<sup>330</sup> *Id.*

<sup>331</sup> Telephone interview with Tony Chaves (2006), *supra* note 313; *Massachusetts Department of Environmental Protection Program Plan/Environmental Performance Partnership Agreement 2005-06* [“Performance Partnership Agreement”], available at <http://www.mass.gov/dep/about/priorities/ppa0506f.pdf> (last visited Apr. 22, 2006).

<sup>332</sup> Massachusetts Dep’t of Environmental Protection, *Interim Policy on Supplemental Environmental Projects*, at 1, available at <http://www.mass.gov/dep/service/enf97005.pdf> (last visited March 20, 2006).

<sup>333</sup> *Id.* at 6.

<sup>334</sup> *Id.* at 3.

<sup>335</sup> *Id.* at 4 (language mirroring that used by US EPA in *Final EPA Supplemental Environmental Projects Policy Issued*, *supra* note 205).

<sup>336</sup> *Performance Partnership Agreement*, *supra* note 331, at 57-62.

Environmental Policy Act (MEPA). The city contended that the project would cause a significant adverse impact disproportionately affecting low-income or minority populations. The court held that the FEIR was adequate, refusing to second guess the Mass Port Authority's methodology, which favorably compared the demographics of the areas within and without a 65 (daytime)/60 (nighttime) decibel noise contour. The court observed that there is no regulation that requires that "each affected community be considered individually in relation to all the affected communities or to the political jurisdictions of which the affected communities are a part."

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## **MICHIGAN**

In 1999, the Michigan Department of Environmental Quality ("MDEQ") sponsored an Environmental Justice Workgroup, which issued a report setting out four recommendations.<sup>337</sup> Among these recommendations, the Workgroup advised that MDEQ and the permit applicant consider a one mile radius around the proposed site to determine whether additional community outreach efforts "would be prudent so as to address potential environmental justice issues."<sup>338</sup> By 2005, MDEQ had conducted several meetings with Detroit stakeholder groups, including community and environmental groups to discuss environmental justice goals.<sup>339</sup>

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## **MINNESOTA**

### **EJ Policies and Programs**

The Minnesota Pollution Control Agency ("MPCA") adopted an environmental justice policy in 1999. The policy seeks to ensure that those in minority and economically disadvantaged communities: (1) do not disproportionately bear environmental burdens; (2) are not denied equal access to environmental benefits; and (3) have opportunities for meaningful input in the development and implementation of environmental policies.<sup>340</sup> The policy broadly calls for the development of environmental justice components in "appropriate MPCA programs," collection of demographic information, and the creation of alliances with EJ communities.<sup>341</sup>

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<sup>337</sup> *Michigan Environmental Justice Workgroup Recommendations* (Oct. 1999) (on file with the authors).

<sup>338</sup> *Id.*

<sup>339</sup> Telephone interview with Pat Spitzley, EJ Coordinator, Michigan Dep't of Environmental Quality (March 3, 2005).

<sup>340</sup> Minnesota Pollution Control Agency, *Strategic Framework and Interim Procedures to Incorporate Environmental Justice Principles and Practices into Minnesota Pollution Control Agency Operations* (Sept. 21, 1999) at 1, available at <http://www.pca.state.mn.us/publications/policy-environmentaljustice.pdf> (last visited April 28, 2006).

<sup>341</sup> *Id.* at 2.

Other Minnesota agencies do not have a formal EJ policy in effect, but the state recognizes and has programs to help facilitate EJ discussions. For example, the Minnesota Office of Environmental Assistance (“MOEA”) created the “good neighbor agreement” program, which is a “voluntary mediation process by which neighbors to a business and that business work towards improving the environmental performance of the business.”<sup>342</sup> Although good neighbor agreements are not legally binding, they help to facilitate a dialogue between industry and the affected communities and avoid court action. One good neighbor agreement was signed between a manufacturer emitting high levels of toluene and several representatives of a southeast Minneapolis community, home to some of the state’s largest reporters of toxic releases.<sup>343</sup>

MOEA also sponsors the Minnesota Sustainable Communities Network (“MnSCN”), a web portal that promotes discussions and information sharing about sustainable communities among interested groups and individuals.<sup>344</sup> The website links users to information on sustainability and specific projects hosted by member groups. One of the member groups makes small grants available to empower local Environmental Justice efforts.<sup>345</sup>

### Performance Partnership Agreement

In October 2001, the MPCA and US EPA entered into a PPA.<sup>346</sup> The Environmental Justice section defines “environmental justice” as ensuring that environmental laws, policies and enforcement fairly treat “people of all races and incomes” and elicit their “meaningful involvement in the decision making process of the government.”<sup>347</sup> In furtherance of these goals, the PPA sets out MPCA’s plan for an advisory task force charged with fact-finding and the development of environmental justice-influenced procedures to be integrated into MPCA’s programs and decision making process.<sup>348</sup>

### Contact

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<sup>342</sup> See MOEA’s NextStep website [http://www.nextstep.state.mn.us/res\\_detail.cfm?id=629&xx=good%20neighbor](http://www.nextstep.state.mn.us/res_detail.cfm?id=629&xx=good%20neighbor) (last visited Feb. 15, 2006).

<sup>343</sup> Joe Mahon, The Minnesota Daily, *Neighborhood Associations Sign Pact with Polluter*, April 3, 2003, <http://www.mndaily.com/article.php?id=5680> (last visited Oct. 7, 2003).

<sup>344</sup> See generally Minnesota Sustainable Communities Network website, <http://www.nextstep.state.mn.us/article.cfm?articleid=3> (last visited Feb. 15, 2006).

<sup>345</sup> Minnesota Sustainable Communities Network, *Good Neighborhood Agreements*, available at [http://www.nextstep.state.mn.us/res\\_detail.cfm?id=1020&xx=environmental%20justice](http://www.nextstep.state.mn.us/res_detail.cfm?id=1020&xx=environmental%20justice) (last visited Feb. 15, 2006).

<sup>346</sup> Minnesota Pollution Control Agency, “Environmental Performance Partnership Agreement,” <http://www.pca.state.mn.us/programs/enppa.html> (last visited Feb. 15, 2006).

<sup>347</sup> *Environmental Performance Partnership Agreement* (2002-04), available at <http://www.pca.state.mn.us/publications/reports/enppa-2002-2004.pdf>, at 12 (last visited Feb. 15, 2006). The 2004-2006 PPA does not expressly reference “environmental justice,” however. *Environmental Performance Partnership Agreement* (2004-06), <http://www.pca.state.mn.us/publications/reports/enppa-2004.pdf> (last visited Jan. 22, 2007).

<sup>348</sup> *Id.*

## **MISSISSIPPI**

### **Statute**

Mississippi's Hazardous Waste Facility statute carries an anti-concentration provision.<sup>349</sup> The provision states: "based on the needs of the State of Mississippi, it is the intent of the Legislature that there shall not be a proliferation of unnecessary facilities in any one (1) county of the state."<sup>350</sup> The wording of this statute is broad, however, because "the needs of the State of Mississippi" could change at any time: the growth of industry in a particular area could create a need for additional facilities. Nevertheless, the statute may serve to protect communities from suffering disproportionate impacts.

### **Case**

#### ***In re Amendment to Madison County Solid Waste Management Plan***

Petitioners contested the Mississippi Commission on Environmental Quality's approval of an amendment to a county Solid Waste Management Plan to include the addition of a new municipal solid waste landfill, where the county already has two nearby landfills.<sup>351</sup> Among other arguments, petitions contended that the facility would disproportionately affect the EJ community and that no notice was provided affected residents. The Commission found that the county adequately considered environmental justice issues (in ruling out discriminatory correlation of existing facilities and minority and low-income populations) and provided for meaningful public involvement, through local public hearings and a community meeting.<sup>352</sup>

### **Contact**

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## **MISSOURI**

### **Policy**

The Missouri Department of Natural Resources ("MDNR") Fiscal Year 2000 Integrated Strategic Plan included an element aimed at developing "a strategy for addressing environmental justice in the decision-making process." The plan sought to create "improved understanding of resource issues resulting in informed decision making"; studying information access points and "develop[ing] a plan to better coordinate access to information and the appropriate medium for that information."<sup>353</sup> Significantly, MDNR set out a variety of performance measures, to assess the efficacy of its informational tactics. MDNR sought to measure progress in reaching its environmental justice objectives, by finding an increase in the number of environmental permits

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<sup>349</sup> MISS. CODE ANN. § 17-17-151 (2003).

<sup>350</sup> *Id.* at § 17-17-151 (e)(4).

<sup>351</sup> *In re Amendment to Madison County Solid Waste Management Plan*, 2005 Miss. ENV LEXIS 65 (Miss. Comm'n on Env'tl. Quality Aug. 25, 2005).

<sup>352</sup> *Id.* at \*23-25.

<sup>353</sup> Missouri Dep't of Natural Resources, *Fiscal Year 2000 Integrated Strategic Plan* (revised Jan. 22, 2001), formerly available at [http://www.dnr.state.mo.us/s\\_plan/fy2000/issue\\_4.htm](http://www.dnr.state.mo.us/s_plan/fy2000/issue_4.htm) (last visited Oct. 10, 2003), archived on the Internet at [http://web.archive.org/web/20010914084032/http://www.dnr.state.mo.us/s\\_plan/fy2000/issue\\_4.htm](http://web.archive.org/web/20010914084032/http://www.dnr.state.mo.us/s_plan/fy2000/issue_4.htm) (last visited Jan. 22, 2007).

issued “which include consideration of the impact on minority and low income populations” as well as capturing the “[d]emographics of groups involved in policy and operational decisions.”<sup>354</sup>

However, the MDNR 2005 Strategic Plan does not refer expressly to “environmental justice.”<sup>355</sup>

## **MONTANA**

Montana does not have a formal EJ policy or program. An official at the Montana Department of Environmental Quality attributed this to the demographics of Montana: there are only small African-American and Latino populations, while the US EPA has primary responsibility for environmental justice as it pertains to Native Americans. The one group “falling between the cracks” would be the retired, elderly poor clustered in rural areas, but that demographic is not captured by US EPA’s EJ criteria.<sup>356</sup>

### **Statute**

#### **Major Facility Siting**

The preamble to the Montana Major Facility Siting Act (“Act”) indicates the legislature’s purpose in passing the statute was to “ensure consideration of socioeconomic impacts” and “provide citizens with the opportunity to participate in facility siting decisions.”<sup>357</sup> The Act requires a cumulative impacts analysis for determining if a proposed “Major Facility” is eligible for expedited review.<sup>358</sup> Major facilities include electric transmission facilities, pipeline facilities, or geothermal facilities.<sup>359</sup> Among the factors to be assessed in the cumulative review is include the severity, duration, geographic extent, and frequency of occurrence of the impact as well as whether the degree to which the impacts on the human environment are likely to create a high level of public concern.<sup>360</sup>

### **Performance Partnership Agreement**

The state of Montana has agreed to support US EPA’s environmental justice efforts, and to work with US EPA to meet its goals. In general, Montana has agreed to further the “EPA’s policies, programs and activities, including public meetings, address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities, consistent with Executive Order 12,898.”<sup>361</sup>

Some of the specific US EPA efforts that Montana has agreed to support include allowing the public to gain access to “compliance and enforcement documents and data, particularly to high

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<sup>354</sup> *Id.*

<sup>355</sup> Missouri Dep’t of Natural Resources, *2005-2009 Strategic Plan*, available at: [http://www.dnr.mo.gov/s\\_plan/s-plan2005.pdf](http://www.dnr.mo.gov/s_plan/s-plan2005.pdf) (last visited June 26, 2006).

<sup>356</sup> Telephone interview with Tom Ellerhoff, Director’s Office, Montana Dep’t of Environmental Quality (Oct. 10, 2003).

<sup>357</sup> MONT. CODE ANN. § 75-20-102.

<sup>358</sup> *Id.* at § 75-20-232.

<sup>359</sup> *Id.* at § 75-20-104.

<sup>360</sup> *Id.* at § 75-20-232(2)(a)-(h).

<sup>361</sup> *Montana Environmental Performance Partnership Agreement* (2004-2006), available at [http://deq.mt.gov/about/Final\\_PPA\\_2004-06.pdf](http://deq.mt.gov/about/Final_PPA_2004-06.pdf) (last visited Feb. 15, 2006); Exec. Order 12,898, *supra* note 21.

risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities.”<sup>362</sup> Montana further agrees that noncompliance can be deterred and environmental and human health improvements achieved “by maintaining a strong, timely and active enforcement presence.”<sup>363</sup>

### **NEBRASKA**

The Nebraska Department of Environmental Quality (“NDEQ”) does not have a formal environmental justice policy.<sup>364</sup> However, the agency has been active in making low income, minority and non-English speaking communities more aware of environmental permitting activities that exist in their areas. NDEQ is also working with the US EPA to develop a protocol to address any environmental justice issues that arise.<sup>365</sup>

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### **NEVADA**

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Nevada.

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### **NEW HAMPSHIRE**

#### **Policy**

In September 1994, the New Hampshire Department of Environmental Services (“NH DES”) incorporated an Environmental Equity Policy and Implementation Strategy into its agenda. The policy states that, “The NH Department of Environmental Services will, within its authority,

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<sup>362</sup> *Id.* at 3.

<sup>363</sup> *Id.* at 4.

<sup>364</sup> Electronic mail from Annette Kovar, Legal Counsel, Nebraska Dep’t of Environmental Quality (March 23, 2005).

<sup>365</sup> *Id.*

ensure fair and equitable treatment of all New Hampshire citizens in the implementation of federal and state environmental laws, rules, programs and policies.”<sup>366</sup>

NH DES's overall approach is to incorporate environmental equity considerations into every applicable decision or action by developing policies and guidance for NH DES staff to integrate into the department's daily decisions or actions. In 2003, NH DES reviewed ways to improve its environmental equity efforts, including re-distributing its policy to staff, providing new training opportunities, updating written guidance, incorporating Environmental Equity Policy in appropriate work plans and grant applications, and reviewing elements of US EPA's Equity Guidance documents.<sup>367</sup> The policy remains in place and is considered by all NH DES staff in their daily work, although it is not considered enforceable.<sup>368</sup>

### **Performance Partnership Agreement**

As a part of the State/US EPA EJ/Title VI Workgroup, NH DES receives US EPA's technical assistance in EJ training, mapping, and policy support. US EPA has prepared and made available its EJ Action Plans to the state. However, NH DES does not take on any affirmative obligations regarding EJ in the PPA.<sup>369</sup>

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## **NEW JERSEY**

### **Executive Order**

On February 19, 2004, former Governor McGreevey signed Executive Order #96, outlining the State's environmental justice policy.<sup>370</sup> The statewide policy applies to all state agencies, rather than being restricted to New Jersey's environmental agency. Under the order, “all Executive Branch departments, agencies, boards, commissions and other bodies involved in decisions that may affect environmental quality and public health” must “provide meaningful opportunities for involvement.”<sup>371</sup> “Programs and policies to protect and promote protection of human health and the environment shall be reviewed periodically to ensure that program implementation and

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<sup>366</sup> New Hampshire Dep't of Environmental Services, *Environmental Equity Policy and Implementation Strategy*, <http://www.des.state.nh.us/equitypolicy.htm> (last visited Feb. 15, 2007).

<sup>367</sup> *Id.*

<sup>368</sup> Telephone interview with Pam Monroe, Waste Management Division, New Hampshire Dep't of Environmental Services (March 8, 2005).

<sup>369</sup> *Performance Partnership Agreement for Federal Fiscal Years 2003 – 2004 Between the New Hampshire Department of Environmental Services and the U.S. Environmental Protection Agency*, at Section III, at 11, available at [http://www.des.state.nh.us/ppa/2003\\_2004PPA.pdf](http://www.des.state.nh.us/ppa/2003_2004PPA.pdf) (last visited Feb. 18, 2006).

<sup>370</sup> James E. McGreevey, former Governor of New Jersey, “Environmental Justice Executive Order” (Feb. 19, 2004) available at <http://www.nj.gov/dep/ej/co.html> (last visited Feb. 18, 2005).

<sup>371</sup> *Id.*



dissemination of information meet the needs of low-income and communities of color, and seek to address disproportionate exposure to environmental hazards.”<sup>372</sup> In addition, the New Jersey Department of Environmental Protection (“DEP”) and the Department of Health and Senior Services (“DHSS”) are to provide greater access to public health and environmental information through Spanish-language websites. Furthermore, the use of “available environmental and public health data to identify existing and proposed industrial and commercial facilities and areas in communities of color and low-income communities” will allow DEP to “address impacts from these facilities.”

Due to the “greater reliance on subsistence fishing among communities of color and low-income communities, DEP, DHSS, and the Department of Agriculture, shall work together to develop and issue appropriately protective fish consumption advisories and provide effective risk communications, education programs and public information services.” DEP and the Department of Transportation will work together to reduce fine particulate pollution, which has been recognized as having significant health implications for urban communities.

#### Environmental Justice Task Force

Created by Executive Order #96 and convened by the DEP Commissioner and the Commissioner of DHSS, the EJ Task Force includes senior management designees from the Office of Counsel to the Governor, the Attorney General's office, the Departments of Environmental Protection, Human Services, Community Affairs, Health and Senior Services, Agriculture, Transportation, and Education.<sup>373</sup> This approach is notable as it involves multiple agencies within the state, in recognition that the issue of environmental justice is not confined to the jurisdiction of the environmental agencies. The EJ Task Force “make[s] recommendations to State Agency heads regarding actions to be taken to address environmental justice issues consistent with agencies' existing statutory and regulatory authority.”<sup>374</sup> The EJ Task Force “is authorized to consult with, and expand its membership to, other State agencies as needed to address concerns raised in affected communities.”<sup>375</sup>

#### Environmental Justice Petitions

By Executive Order #96, “groups of residents and workers can file petitions for review by the Task Force when they believe they are subject to disproportionate, adverse exposure to environmental health risks or other forms of environmental injustices.”<sup>376</sup> The DEP website provides guidance on filing petitions.<sup>377</sup>

After petitions have been filed, the EJ Task Force “meets directly with representatives from the affected communities to understand their concerns, and may, if desired by members of the

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<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> New Jersey Dep’t of Environmental Protection, “Environmental Justice Task Force Advances Petitions to Address Community Environmental and Public Health Concerns,” [http://www.state.nj.us/dep/newsrel/2005/05\\_0083.htm](http://www.state.nj.us/dep/newsrel/2005/05_0083.htm) (last visited Feb. 18, 2006).

<sup>377</sup> New Jersey Dep’t of Environmental Protection, “About the Environmental Justice Petition Process,” <http://www.nj.gov/ejtaskforce/tfpetition.html> (last visited Feb. 18, 2006).



community, hold meetings to evaluate the petitioners' claims.”<sup>378</sup> The Task Force then works with communities and the legislative bodies to develop action plans to address the petitioned concerns.<sup>379</sup> Recent petitions concern health effects from an incomplete assessment and cleanup of contamination by the US EPA at a former Superfund site; “potential exposure to airborne asbestos and lead from demolition activities at the former Pabst Brewery site in Newark, New Jersey”; and the “protection and preservation of area wetlands, the lack of public participation and rising asthma rates in the city of Linden.”<sup>380</sup>

## Programs

### Environmental Justice Advisory Council

In 2004, the Commissioner of DEP reestablished the Environmental Justice Advisory Council. The Advisory Council consists of fifteen individuals from the community, with a minimum of one-third membership from grassroots or faith-based community organizations. Additional members are from the following communities: academic, public health, statewide environmental civil rights and public health organizations; large and small business and industry; municipal and county officials, and organized labor.<sup>381</sup> Charged with making strategic recommendations to the DEP Commissioner, the Advisory Council seeks to ensure that DEP develops effective communication programs, implements and enforces environmental laws, regulations, and policies so that such actions do not unfairly burden any New Jersey population of people with a disproportionate share of environmental pollution. Further, the Advisory Council is directed to encourage DEP to provide an outreach mechanism to direct community participation in environmental decision making.<sup>382</sup>

### Camden Waterford South Air Toxics Pilot Project

In 2005, the DEP conducted a special study to learn more about sources of air pollution in the Camden Waterfront South neighborhood, an environmental justice community.<sup>383</sup> This is the first study of its kind in New Jersey that looks at the cumulative impacts of air pollution.<sup>384</sup> A community advisory committee of neighborhood residents, nonprofit organizations and clergy members played an important role in this project. Members of the advisory committee helped to identify new sources of air pollution that concerned the neighborhood, and worked with DEP staff to find ways to protect citizens from air toxics and particulates that pose the greatest health risks.<sup>385</sup>

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<sup>378</sup> New Jersey Dep’t of Environmental Protection, “Environmental Justice Task Force Advances Petitions,” *supra* note 376.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> “Environmental Justice Executive Order” *supra* note 370.

<sup>382</sup> New Jersey Dep’t of Environmental Protection, “Environmental Justice Advisory Council,” <http://www.state.nj.us/dep/ej/index.html> (last visited Oct. 31, 2005).

<sup>383</sup> New Jersey Dep’t of Environmental Protection, “Camden Waterford South Air Toxics Pilot Project”, available at <http://www.state.nj.us/dep/ej/camden/> (last visited Feb. 18, 2006).

<sup>384</sup> Telephone Interview with Jereme Johnson, Environmental Justice Coordinator, New Jersey Dep’t of Environmental Protection (Nov. 7, 2005).

<sup>385</sup> *Id.*; “Camden Waterford South Air Toxics Pilot Project,” *supra* note 383.

### Brownfield Development Area Initiative

NJ DEP has an integrated approach towards brownfield redevelopment, working with “communities affected by multiple brownfields to design and implement remediation and reuse plans for these properties simultaneously,” coordinating the remediation and reuse of the brownfields.<sup>386</sup> Significantly, the initiative brings together “[a]ll stakeholders, including owners of contaminated properties, potentially responsible parties, developers, community groups, technical experts for the local government and residents, and residents themselves.”<sup>387</sup>

### Urban tree planting program

In October of 2003, the DEP began implementing the Cool Cities program to help achieve former Governor McGreevey’s goal to plant 100,000 trees across New Jersey.<sup>388</sup> Cool Cities, a “statewide urban forest energy efficiency initiative,” sought to improve the quality of life in urban areas by planting trees in New Jersey’s urban areas. More trees allow for the environmental, health, and economic benefits of less air pollution, cooler temperatures in cities, and lower energy costs, thus making cities “cleaner, more pleasant, and more affordable places to live.”<sup>389</sup> The NJ Board of Public Utilities committed \$2 million in funding for the initial phase of Cool Cities, by planting 3,000 trees in Paterson and Trenton in 2003.<sup>390</sup> Future tree plantings are planned for the spring of 2006.<sup>391</sup>

### DEP City-Focused Enforcement Initiatives

An older, but notable, environmental justice program is DEP’s use of multi-media “enforcement sweeps,” underscoring the importance of environmental enforcement in environmental justice communities. These enforcement sweeps marshal a large DEP enforcement team from nearly all of its units (*e.g.*, the Bureau of Air Monitoring and the Pesticide Control Program) and send the team into urban areas with large environmental justice populations.<sup>392</sup> In these areas, the DEP conducts outreach and compliance education programs, followed by broad inspections, while using the power of its permitting authority to force violators to clean up and comply with environmental regulations already on the books.<sup>393</sup>

DEP enforcement sweeps are listed on its website, and have included diesel engine idling, regulated medical waste, waterway enforcement team, school integrated pest management, agricultural worker safety, wetlands restoration, truck inspections.<sup>394</sup> DEP has focused on specific

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<sup>386</sup> New Jersey Dep’t of Environmental Protection, “Brownfield Development Area Initiative,” [http://www.nj.gov/dep/srp/brownfields/bda/bda\\_synopsis.htm](http://www.nj.gov/dep/srp/brownfields/bda/bda_synopsis.htm) (last visited Feb. 18, 2006).

<sup>387</sup> *Id.*

<sup>388</sup> New Jersey Dep’t of Environmental Protection, “State to Plant 1,500 Trees in City of Trenton: DEP & BPU Kick-Off Cool Cities: an Urban Forest Energy Efficiency Initiative,” available at [http://www.nj.gov/dep/newsrel/releases/03\\_0153.htm](http://www.nj.gov/dep/newsrel/releases/03_0153.htm) (last visited Nov. 1, 2005).

<sup>389</sup> *Id.*

<sup>390</sup> New Jersey Dep’t of Environmental Protection, “Cool Cities,” <http://www.state.nj.us/dep/cj/coolcities.html> (last visited Nov. 1, 2005).

<sup>391</sup> Telephone interview with Jeremee Johnson, *supra* note 384.

<sup>392</sup> Telephone interview with Michelle DePass, former Senior Policy Advisor to the Commissioner, New Jersey Dep’t of Environmental Protection (Feb. 25, 2003).

<sup>393</sup> *Id.*

<sup>394</sup> New Jersey Dep’t of Environmental Protection, “Enforcement in Action: Constant Compliance Assurance,” <http://www.nj.gov/dep/enforcement/initiatives.html> (last visited April 22, 2005).

communities, as well: Camden City and Paterson are two examples.<sup>395</sup> In the Camden City Initiative, more than 70 inspectors performed 764 investigations, finding 98 facilities in violation.<sup>396</sup> The violations uncovered during the Paterson sweep “ranged from unregistered underground storage tanks and failure to install air monitoring and emissions equipment, to illegal treatment and storage of hazardous wastes and unpermitted stormwater discharge activities.”<sup>397</sup> According to information formerly available on DEP’s website, the number of enforcement strikes has increased significantly in the past few years, from two per year in 2003, to seventy-five strikes within a two-week period in October of 2005.<sup>398</sup>

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## NEW MEXICO

In addition to the recent activity profiled below, the New Mexico Environment Department (“NMED”) has hired a full time EJ Coordinator in the Office of the Secretary.<sup>399</sup>

## Executive Order

On November 18, 2005, New Mexico Governor Bill Richardson issued an Environmental Justice Executive Order. The Order directs all cabinet level departments and boards and commissions to: (1) “provide meaningful opportunities” for public involvement in decisions that affect environmental quality and public health; (2) consider impacts to low-income communities and communities of color when making siting, permitting, compliance, enforcement, and remediation decisions; and (3) disseminate information regarding public health and environmental issues in English and Spanish, and when appropriate, various tribal languages and dialects as well.

The Order also created an Environmental Justice Task Force to serve as an advisory body to make recommendations “for actions to be taken to address environmental justice issues.”<sup>400</sup> The Task Force met for the first time on March 30, 2006, with the stated goals of issuing a report by year’s end, and “to get all state agencies thinking about the fairness of environmental impacts as they

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<sup>395</sup> New Jersey Dep’t of Environmental Protection, “Paterson City – Compliance and Enforcement Sweep,” <http://www.state.nj.us/dep/enforcement/paterson/paterson.html> and “Camden City Initiative,” <http://www.nj.gov/dep/enforcement/camden.html> (last visited April 22, 2006).

<sup>396</sup> “Camden City Initiative,” *id.*

<sup>397</sup> New Jersey Dep’t of Environmental Protection (DEP) Commissioner Bradley M. Campbell Press Release, [http://www.state.nj.us/dep/newsrel/releases/03\\_0184.htm](http://www.state.nj.us/dep/newsrel/releases/03_0184.htm) (last visited April 22, 2006).

<sup>398</sup> Information formerly available on New Jersey Dep’t of Environmental Protection, *Compliance and Enforcement*, “The Enforcement Blotter,” <http://www.nj.gov/dep/enforcement/initiatives.html> (visited Oct. 31, 2005).

<sup>399</sup> Telephone interview with Derrith Watchman-Moore, NMED Deputy Secretary (Aug. 8, 2005).

<sup>400</sup> “Environmental Justice Executive Order, Executive Order 2005-056” *available at* [http://www.nmenv.state.nm.us/Justice/EO\\_2005\\_056.pdf](http://www.nmenv.state.nm.us/Justice/EO_2005_056.pdf) (Nov. 18, 2005).

develop their own rules and regulations and to give residents a place to have their complaints addressed.”<sup>401</sup>

## Regulation

NMED has issued the final version of proposed revisions to the State’s solid waste regulations, which impose special requirements upon permit seekers where the new or changed facility is within a “vulnerable area.”<sup>402</sup> “Vulnerable areas” are defined as being “within a four-mile radius of the geographic center of a proposed facility; have a proportion of economically-stressed households higher than the state average; have a population of 50 or more people within any square mile; and contain three or more regulated facilities, which might include a solid waste, a hazardous waste or a Superfund site, or a facility with a large source air quality permit.”

Significantly, the regulations change the burden of proof for determining disproportionate impact. The permit seeker must provide public notice of the proposal, including “a description of the facility, its location, proposed transportation routes, anticipated hours of operation,” and inform affected residents about how to participate in the decision making process. Further, if NMED believes a significant amount of community opposition to the proposed facility exists, it can require the applicant to prepare a community impact assessment, complete with an executive summary in the predominant language of the community.

## Programs and Services

In November 2004, the New Mexico Environment Department (“NMED”) released *A Report on Environmental Justice in New Mexico*. The report contained a compilation of the four “Listening Sessions” conducted by the NMED, as well as recommendations for the new environmental justice policy program to be implemented by the state. NMED’s first steps towards formulating its environmental justice policy included this formulation of goals:

“The key to making good things happen is to empower EJ individuals and communities through right-to-know strategies, education, capacity-building, true public input processes and enforcement of environmental laws to prevent disproportionate impacts to a select group of EJ minorities and low-income people.”<sup>403</sup>

### The “Listening Sessions”

In response to environmental justice concerns in New Mexico, NMED conducted four “Listening Sessions” which incorporated history of the EJ movement, panel issues, and public comment sessions. The ultimate goal of the sessions was to “elicit information and recommendations from stakeholders in minority and low-income communities.”<sup>404</sup>

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<sup>401</sup> “State Looks at Environmental Impacts on Residents,” *Las Cruces Sun-News* (March 31, 2006) at 8A.

<sup>402</sup> New Mexico Environment Dep’t, “NMED releases Solid Waste Regulation Revisions with Historic Environmental Justice Provisions,” (Apr. 5, 2006), <http://www.nmenv.state.nm.us/OOTS/PR/SW%20EJ%20Provisions%20PR.pdf> (last visited April 28, 2006).

<sup>403</sup> *A Report on Environmental Justice in New Mexico* (Nov. 2004), at 8, available at <http://www.nmenv.state.nm.us/Justice/Reports/NMEDFinalReport-Dec07-04.pdf> (last visited Jan. 5, 2006).

<sup>404</sup> *Id.* at 3.

The sessions were held in four location -- Deming (southwest/US-Mexico border), Las Vegas (northeast), Pueblo of Acoma (northwest), and Albuquerque (central and statewide) -- chosen for their relation to the following considerations: regional EJ issues, proximity to EJ communities, ability of the host city to accommodate the convention, and the willingness of the communities and municipalities to address EJ issues.<sup>405</sup> Pamphlets were distributed to the public explaining how to better formulate their concerns and offer recommendations more effectively. A record of the sessions was then published along with recommendations for the new EJ policy in *A Report on Environmental Justice in New Mexico*.

The public comments identified seven primary issues: (1) an interagency mechanism to address environmental justice (create an agency that includes federal, state, local, and tribal representatives to address issues by interactive policy development); (2) permitting reform; (3) enforcement enhancement (develop stricter standards and do not rely on self-reporting); (4) training programs (educate communities about permit proceedings and how to report environmental problems); (5) procedural issues (such as information disclosure, public participation and transparency); (6) data collection (aiding in the identification of EJ communities); and (7) issues specific to Native Americans and tribal governments.<sup>406</sup> These cross-cutting themes appear in the topics set out below.

#### Recommendations for Communication Strategies

The report notes that NMED has designated communication between the State of New Mexico and EJ communities as one of its primary concerns and has adopted a “relationship-building” approach to encourage it.<sup>407</sup> This approach is based on the idea of “social trust,” which is attained through seven key elements used in “good two-way communication”: 1) Disclosure (the NMED should be open about its activities); 2) Accuracy/Understanding (NMED and EJ communities should share an understanding about the nature of the programs implemented); 3) Agreement; 4) Symbiotic Behavior (NMED should act to make the state a better place for all of its citizens); 5) Accountability (NMED should not only be open about its policies, but it should also provide the rationale for its decisions); 6) Assurances of Legitimacy (each party should demonstrate its commitment to maintaining the relationship); and 7) Networking.<sup>408</sup>

#### A Possible Model for Collaboration

In order to build a long-term relationship with EJ communities, the report recommends that the state organize a State EJ External Coordination Working Group that would foster open dialogue from various community representatives such as federal, tribal, environmental justice and local government organizations, labor, industry, and other professional groups. Members would serve the group in three broad capacities: (1) represent their constituent organizations; (2) participate actively and consistently in the State’s EJ activities; and (3) communicate the findings and recommendations of the group back to their organizations for further input.

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<sup>405</sup> *Id.* at 2.

<sup>406</sup> *Id.* at 17-21.

<sup>407</sup> *Id.* at 15.

<sup>408</sup> *Id.* at 7-8.

### Definition of an EJ Community

In addition to assessing the typical indicators of an “environmental justice” or “highly impacted community,” the report suggests that NMED consider additional safety risks or risks of accidents, the compliance record of the permit applicant at other locations, non-emission related impacts such as noise, traffic, odor, and foreseeable injury to nontraditional cultural practices. Furthermore, the NMED is requested to keep its definition of “environmental justice community” confined to a case-by-case decision because of the difficulty in assessing collective data from the sparsely populated Native American reservations to the more congested urban areas.<sup>409</sup> The main concern is that without case-by-case determinations, some decisions could adversely affect native populations. Thus, the decision should be based on the totality of the circumstances. If the permit under consideration will negatively impact the region more protective measures should be taken before issuance.<sup>410</sup>

### Practical Alternative Standard

Further recommendations suggest that once an EJ community is defined, and a permit has been determined to affect the EJ community, the “practical alternative” standard is used to decide upon the appropriate measures to be taken. A practical alternative exists if another location would not be highly impacted by the existence of the permit. If no suitable alternative is found, then the permitting officials are requested to adopt an approach which would otherwise “avoid, minimize or compensate, in that order.”<sup>411</sup>

### Memorandum of Understanding (“MOU”)

“Listening session” comments highlighted “the need to establish a Tribal-State Government-to-Government relationship” in regards to EJ issues. The suggested means is the negotiation of a Memorandum of Understanding, in which Tribe representatives and the NMED could “establish a general policy of Government-to-Government consultation.”<sup>412</sup>

## **Case**

### *Colonias Dev. Council v. Rhino Envtl. Services, Inc.* (2005)<sup>413</sup>

A company sought a landfill permit in Chaparral, a low-income, minority community already the site of four waste disposal facilities and three industrial sites within a 60 mile radius. NMED held a public hearing, as required by the Solid Waste Act.<sup>414</sup> NMED subsequently granted the permit, and a community group brought suit to challenge the permit.

The Supreme Court of New Mexico agreed with the plaintiff’s contention that NMED improperly limited the scope of the public hearing to technical issues, in that the hearing examiner would not allow testimony regarding the impact of the landfill on the community’s quality of life or the cumulative impact of the landfill. Referencing the Legislature’s recognition of the importance of meaningful public participation, the Court rejected the defendant’s argument that once siting criteria

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<sup>409</sup> *Id.* at 23.

<sup>410</sup> *Id.*

<sup>411</sup> *Id.* at 24

<sup>412</sup> *Id.* at 27

<sup>413</sup> *Colonias Dev. Council v. Rhino Envtl. Svcs., Inc.*, 117 P.3d 939 (2005).

<sup>414</sup> N.M. STAT. ANN. §74-9-1 (2005).

are met, NMED has no discretion to deny a permit,<sup>415</sup> To the Court found that the concern for “public health, safety and welfare” in the Solid Waste Act was broad enough to encompass non-technical input.<sup>416</sup>

The case was remanded with instructions for another public hearing, focused on the issues of the impact of a landfill on the community's quality of life, as well as the cumulative impacts of the proposed landfill.

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## NEW YORK

### Statute

A New York statute governs the implementation of remedial programs for brownfields sites. In determining the proper approach for soil remediation, New York State Department of Environmental Conservation (“DEC”) must consider the site’s potential land uses, with the further requirement that DEC consider environmental justice concerns, and “the extent to which the proposed use may reasonably be expected to cause or increase a disproportionate burden on the community in which the site is located, including low-income minority communities, or to result in a disproportionate concentration of commercial or industrial uses in what has historically been a mixed use or residential community.”<sup>417</sup>

### Policy

#### 2003 EJ Policy

On March 19, 2003, DEC issued a new policy for incorporating environmental justice concerns into its permit process, following the Advisory Group's initial recommendations and the public's comments.<sup>418</sup> The policy modifies DEC’s environmental permit process by providing that DEC will identify minority or low-income communities through census block data and GIS technology, resulting in EJ communities being defined for areas with as few as 250 to 500 housing units.<sup>419</sup> The policy sets the threshold for an “EJ impact” low: a project in a minority or low-income community with the potential for at least one significant, adverse environmental impact triggers its provisions. Significantly, the policy creates a new “enhanced” public participation requirement binding upon permit applicants. If a project has a potential impact on an EJ community, the permit applicant must submit a written public participation plan describing how the applicant will identify

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<sup>415</sup> *Rhino*, 117 P.3d at 945.

<sup>416</sup> *Rhino*, 117 P.3d at 948; N.M. Stat. Ann. § 74-9-2(C).

<sup>417</sup> NY CLS ECL § 27-1415(2)(i)(vii) (2006).

<sup>418</sup> New York State Dep’t of Environmental Conservation, *Environmental Justice and Permitting*, <http://www.dec.state.ny.us/website/ej/ejpolicy.pdf> (last visited March 17, 2006).

<sup>419</sup> *Id.* at 3, 7.



stakeholders, produce easily understood project information, schedule public meetings and establish document repositories.<sup>420</sup> DEC's EJ program is developing a technical assistance program pursuant to the policy.

### 2005 Reports

On January 1, 2005, DEC announced the availability of two reports relating to environmental justice, *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group* and *Report of the Health Outcome Data Work Group*, and allowed a 90-day written public comment period. Convened by DEC's Environmental Justice Advisory Group to improve NYDEC's environmental review process, the Disproportionate Adverse Environmental Impact Work Group (DAEI) and the Health Outcome Data Work Group (HOD) issued the reports suggesting improved data collection methods for the NYDEC.<sup>421</sup>

#### *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group*<sup>422</sup>

The *Report of the Disproportionate Adverse Environmental Impact Analysis Work Group* describes how state agencies should assess disproportionate environmental impacts on minority and/or low income areas that are identified as a potentially impacted area. The work group was unable to reach a consensus upon an appropriate method for conducting a disproportionate adverse environmental impact analysis and consequently summarized the six methods that were discussed. The methods include: Comparative Community of Concern Analysis (a comparison between the project's impact on the community of concern and its surrounding area); Proportional Impact Analysis by Demographics (compares impacts within the community of concern); Proportional Impact Analysis by Project Impact (compares impact zones by their demographics thereby revealing disproportionate impacts when the most adversely affected zone contains a minority/low income area); Alternative Site Analysis (comparison of the proposed project's preferred site with alternate sites); Geographic Information System Burden Analysis (uses a GIS tool to compare the existing environmental burdens, along with the project impacts, on a community of concern to those of a reference community); and Burdened Area Analysis (uses a GIS tool to determine whether an area is currently burdened).<sup>423</sup>

In spite of the committee's inability to generate a consensus, the work group did publish the six methods discussed as a list of recommendations to ensure that DEC's review process is responsive to EJ concerns. The recommendations offer direction and discretion to DEC while "expand[ing] upon the field of readily available indicators that are descriptive of media impacts and burdens."<sup>424</sup>

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<sup>420</sup> *Id.* at 8.

<sup>421</sup> New York State Dep't of Environmental Conservation, "The New York State Department of Environmental Conservation Announces the Availability of Two Reports Related to Environmental Justice," <http://www.dec.state.ny.us/website/ej/workgroupreports.html> (last visited Jan. 5, 2006).

<sup>422</sup> New York State Dep't of Environmental Conservation, "Report of the Disproportionate Adverse Environmental Impact Analysis Work Group," available at <http://www.dec.state.ny.us/website/ej/daeireport.pdf> (last visited Sept. 11, 2005).

<sup>423</sup> *Id.* at 12-16.

<sup>424</sup> *Id.* at 19.



*Report of the Health Outcome Data Work Group*<sup>425</sup>

Charged with the task of finding existing reliable sources of health data and recommending a means with which to incorporate such data into the environmental permit review process, HOD determined that the numerous variables that contribute to the health data outcome make the strength of the correlation between effects of environmental exposures and health unreliable. However, when compared to the health of other geographic areas it is hypothesized that observable correlations will increase.<sup>426</sup>

## Programs

### Environmental Justice Advisory Group

In October 1999, DEC created the Office of Environmental Justice to address environmental justice concerns and ensure community participation in the state's permitting process.<sup>427</sup> The Environmental Justice Advisory Group was also created at that time, and is responsible for developing recommendations for an Environmental Justice Permit Policy for the state, prioritizing environmental justice issues, and recommending procedures that can be used to address these priorities.<sup>428</sup>

The Advisory Group is noteworthy for its efforts to draw its membership from a broad cross-section of stakeholders as well as for the level of involvement of non-governmental community organizations. The EJ Advisory Group is comprised of environmental justice advocates, environmental advocates, tribal representatives, academics, business representatives, as well as federal, state, and local representatives.<sup>429</sup>

In early 2002, the Advisory Group issued a report entitled "Recommendations for the New York State Department of Environmental Conservation Environmental Justice Program," which advised DEC on incorporating environmental justice principles into the State Environmental Quality Review Act ("SEQR") permit review process.<sup>430</sup> Recommendations for the SEQR process included: conducting a preliminary screening in DEC's SEQR review to identify minority and low-income communities that may be affected by the proposed action; using a full environmental assessment form for unlisted actions in these communities; and providing an extended public comment period and public hearing for proposed projects that would have a significant adverse impact on a minority or low-income community.<sup>431</sup>

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<sup>425</sup> New York State Dep't of Environmental Conservation, *Report of the Health Outcome Data Work Group*, available at <http://www.dec.state.ny.us/website/ej/hodreport.pdf> (last visited Sept. 11, 2005).

<sup>426</sup> *Id.* at 27-30.

<sup>427</sup> New York State Dep't of Environmental Conservation, Office of Environmental Justice, "DEC to Implement Environmental Justice Program," <http://www.dec.state.ny.us/website/press/pressrel/1999/99x146.html> (last visited March 17, 2006).

<sup>428</sup> *Id.*

<sup>429</sup> New York State Dep't of Environmental Conservation, Office of Environmental Justice, "Environmental Justice Advisory Group: Members," <http://www.dec.state.ny.us/website/ej/memberlist.html> (last visited March 17, 2006).

<sup>430</sup> New York State Dep't of Environmental Conservation, "New York State Department of Environmental Conservation Announces Completion of Report," available at <http://www.dec.state.ny.us/website/ej/ejfinalreport.pdf> (last visited March 17, 2006).

<sup>431</sup> New York State Dep't of Environmental Conservation, Office of Environmental Justice, <http://www.dec.state.ny.us/website/ej/index.html> (last visited March 17, 2006).

New members have been added to the EJ Advisory Group and new projects have been implemented to make routine use of the group, which has a regular meeting schedule.<sup>432</sup>

#### Environmental Justice Hotline

DEC runs a toll-free “Environmental Justice Hotline” that provides callers with information on the state’s EJ Program, environmental issues in minority or low-income communities, environmental laws, regulations, policies, permitting and enforcement related to EJ in the state, and grant opportunities.<sup>433</sup>

#### DEC Multilingual Activities

DEC has translated many of its pamphlets and much of its signage into Spanish.<sup>434</sup>

#### Additions to the Website

DEC website has a new search feature that allows the public to search permit applications before the application is released as complete. This gives the public enough time to respond to the permit in a more meaningful manner.<sup>435</sup> The new feature specifies the project manager, the applicant, and other permit related resources.

DEC's website also features an “Environmental Navigator” which is DEC's GIS interface for interactive mapping of facilities of environmental interest.<sup>436</sup> This outward facing tool permits affected communities and regulated industries to understand the potential EJ effects of proposed and ongoing facilities.

#### Funding

DEC received a \$500,000 appropriation to start a new grant program that will give community groups up to \$25,000 for research and actions related to multiple environmental harms and risks.<sup>437</sup>

### **Cases**

#### *American Marine Rail (2000)*

An administrative law judge held that New York’s version of the federal National Environmental Policy Act (“NEPA”) required DEC to consider and perform analysis of the environmental justice issues. The case concerned a permit application for a barge-to-rail solid

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<sup>432</sup> New York State Dep’t of Environmental Conservation, “Environmental Justice Advisory Group,” <http://www.dec.state.ny.us/website/ej/advisorygroup.html> (last visited April 22, 2006).

<sup>433</sup> New York Office of Environmental Conservation, “Environmental Justice Hotline,” <http://www.dec.state.ny.us/website/ej/hotline.html> (last visited March 17, 2006).

<sup>434</sup> New York State Dep’t of Environmental Conservation, “Environmental Justice Program Spanish Links page,” <http://www.dec.state.ny.us/website/ej/spanish.html> (last visited April 22, 2006).

<sup>435</sup> New York State Dep’t of Environmental Conservation, “DEC Permit Applications,” <http://www.dec.state.ny.us/cfm/xtapps/envapps/> (last visited April 22, 2006).

<sup>436</sup> New York State Dep’t of Environmental Conservation, *DEC’s Environmental Navigator*, <http://www.dec.state.ny.us/website/imsmaps/navigator/index.html> (last visited March 17, 2006).

<sup>437</sup> Telephone interview with Monica L. Kreshik, Environmental Justice Coordinator (Aug. 11, 2005).

waste transfer station in the Bronx.<sup>438</sup> New York’s State Environmental Quality Review Act (“SEQRA”) requires that agencies consider impacts to the environment including “land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.”<sup>439</sup> The administrative law judge was persuaded that SEQRA’s “broad mandate” encompassed the concerns of environmental justice prompted by the permit application: “[b]y doing a proper analysis under SEQRA, the lead agencies will determine what impacts are to be expected from the project, whom they will affect and what measures must be taken to ensure that these effects are mitigated to the maximum extent practicable. These steps will ensure that environmental justice considerations are addressed.”<sup>440</sup>

*Bronx Environmental Health and Justice, Inc. (2005)*<sup>441</sup>

A community organization challenged the decision of the New York City Department of Environmental Protection (“DEP”) in siting a water treatment plant in a park in the Bronx, adjacent to a poor minority neighborhood. The plaintiff claimed that “DEP acted arbitrarily and capriciously” and failed to involve the public in the State Environmental Quality Review Act (SEQRA) process. Plaintiffs alleged that siting decision was discriminatory and that a site in Westchester County was more appropriate. The plaintiffs also sought review of the environmental justice component of DEP’s environmental impact statement. DEP countered that it complied with all SEQRA requirements and that it considered all potential environmental impacts of the plant.

The court held that “the public was adequately involved in the review process” through three public hearings and a written comment period. Furthermore, the court ruled that the request for an environmental justice analysis was premature as no permit application for the water treatment plant had been filed with the state agency, DEC. An environmental justice review is only required when an applicant is seeking a permit from the state, hence, no environmental justice review was required yet.<sup>442</sup> The court also denied the claim that selection of the site violated civil rights including the “basic right to health and environment,” observing that the equal protection clause of the state Constitution did not provide any legal rights.<sup>443</sup>

*Friends of Van Cortlandt Park (2004)*

In *Friends of Van Cortlandt Park v. City of New York*, a community group filed a claim against the City over the construction of a water filtration plant in Van Cortlandt Park. Plaintiffs argued that the City did not take a “hard look” at the environmental effects as required under New York’s State Environmental Quality Review Act (SEQRA), and also “failed to conduct an environmental justice analysis to identify and evaluate any potential adverse impacts of the project on minority

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<sup>438</sup> *Matter of American Marine Rail, LLC*, 2000 N.Y. Env. LEXIS 63 (Aug. 25, 2000), *rev’d in part on other grounds* in Final Decision by Commissioner Cahill, 2001 N.Y. Env. LEXIS 6 (Feb. 14, 2001).

<sup>439</sup> *Id.* at \*195, citing SEQRA, ECL §§ 8-0105(6), 8-0109.

<sup>440</sup> The opinion also relied on the penumbra of federal law, specifically Title VI of the Civil Rights Act of 1964, *supra* note 37 (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance”) and Executive Order 12,898, *supra* note 21 (requiring Federal agencies to ensure compliance with Title VI for all Federally-funded programs that affect human health or the environment).

<sup>441</sup> *Bronx Envtl. Health & Justice, Inc. v. N.Y. City Dep’t of Envtl. Protection*, 2005 N.Y. Misc. LEXIS 1177 (Sup. Ct. Queens County May 11, 2005).

<sup>442</sup> *Id.* at \*8.

<sup>443</sup> *Id.* at \*9-10; NY CLS Const Art I, § 11.

communities in the area.” Dismissing the case, the court held that “an environmental justice review was not legally required, but that the City, in fact, had made such a socio-economic review in the final EIS.”<sup>444</sup>

*Jamaica Recycling Corp v. City of New York* (2006)<sup>445</sup>

Solid waste companies challenged the New York City Department of Sanitation’s (DOS) new anti-concentration siting rules for solid waste transfer stations. The revised rules prohibited new transfer stations in areas that already have three existing stations; in addition, they specified that at least 400 to 700 feet must separate any transfer station and residential districts, parks, schools, hospitals and other transfer stations, depending on the concentration of pre-existing facilities.<sup>446</sup>

The court upheld the rules finding them a reasonable exercise of DOS’s police power to protect public health and welfare, observing, “transfer stations can create odors, dust and noise and thus are a potential nuisance to neighboring communities.”<sup>447</sup> The court noted that the new laws addressed the problem of waste station “clustering” that other courts had criticized as failing to meet the DOS’s legislative mandate to regulate the proximity of waste stations to residences, schools and parks.

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## **NORTH CAROLINA**

### **Statute**

#### Solid Waste Permits

The state’s solid waste permitting statute requires that local demographics be considered in the selection or approval of landfills.<sup>448</sup> When an application is made for a new landfill to be located within one mile of an existing sanitary landfill, “the governing board of a city shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving” the landfill.<sup>449</sup> The permitting authority must consider the most recent census data for the area before approval, but there are no additional guidelines in the statute as to how the data should be analyzed in making the decision. Nevertheless, the socioeconomic data must be disclosed at public hearing prior to any decisions.<sup>450</sup>

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<sup>444</sup> *Friends of Van Cortlandt Park v. City of New York*, 2004 N.Y. ENV LEXIS 59 (Sup. Ct. New York Co. Dec. 3, 2004) (litigation challenging this project on environmental justice grounds is pending in New York State Supreme Court, Queens County).

<sup>445</sup> *Jamaica Recycling Corp v. City of New York*, 816 N.Y.S.2d 282; 2006 N.Y. Misc. LEXIS 50 (2006).

<sup>446</sup> 816 N.Y.S. 2d at 288.

<sup>447</sup> 816 N.Y.S. 2d at 291.

<sup>448</sup> N.C. GEN. STAT. § 153A-136(c) (2005).

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

## EJ Policies and Procedures

### Environmental Equity Initiative

In 2000, the North Carolina Department of Natural Resources (“NC DENR”) issued its Environmental Equity Initiative. The initiative seeks to facilitate communication between industries and affected communities, primarily by providing information to communities to make possible their meaningful participation in the regulatory process.<sup>451</sup>

The NC DENR posits its role as that of mediator, rather than proactive agent for environmental justice.<sup>452</sup> According to the Environmental Equity Initiative, “low income and minority communities often believe that they are burdened with a disproportionate share of [the] state’s environmental risks. This belief in some instances may be well founded. However, these beliefs can also create a hostile environment in which good faith efforts to resolve disputes address concerns, and seek consensus solutions are nearly certain to fail.”<sup>453</sup> As of 2005, the Environmental Equity Policy remains in place to address environmental justice issues throughout NC DENR.<sup>454</sup>

### Environmental Review of Cumulative Impact

An aspect of NC DENR’s permit review process has the potential to aid environmental justice concerns. The review procedures require the evaluation of the “cumulative and or secondary impacts as part of the State Environmental Protection Act or environmental permit process.”<sup>455</sup> While not specifically targeting EJ populations, the cumulative impacts assessment has implications for achieving environmental justice for disproportionately affected communities by recognizing that while an individual permitting decision may not have an adverse effect on the local community, the cumulative effect of permitting decisions over time may result in environmental hazards. This is particularly important for communities that may, as a historic matter, been the recipients of disproportionately high amounts of environmental degradation, intentionally or not. Moreover, examining the potential secondary impacts of a project requires permitting authorities to take a forward-looking view of the consequences of a present permitting decision. For example, “secondary impacts may be of concern when building a new reservoir which can lead to requirements for new drinking water treatment plants, wastewater treatment facilities, condemnation of privately owned lands, and other infrastructure requirements, all which may create significant environmental impacts. In some cases, these secondary and cumulative impacts can then be responsible for increased air pollution, sedimentation, non-point-source pollution, degraded water quality, and loss of . . . natural resources.”<sup>456</sup>

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<sup>451</sup> North Carolina Dep’t of Natural Resources, *Environmental Equity Initiative*, available at <http://www.enr.state.nc.us/admin/pdf/Envequin.pdf> (last visited Feb. 11, 2006).

<sup>452</sup> This mediation approach resembles the Louisiana model of the Community Industry Relations program, where the state regulators view their roles as bringing all parties to the table and getting a dialogue underway.

<sup>453</sup> *Id.*

<sup>454</sup> Electronic mail from Mary Penny Thompson, Assistant General Counsel, North Carolina Dep’t of Natural Resources (May 10, 2005).

<sup>455</sup> North Carolina Dep’t of Natural Resources, *Cumulative and/or Secondary Impacts Evaluation Process for Department Level Projects*, available at <http://www.enr.state.nc.us/admin/pdf/CSIpolf.pdf> (last visited June 13, 2005).

<sup>456</sup> *Id.*

### Community Involvement and Complaint Procedures

Complaints about all NC DENR processes, environmental justice or otherwise, may be submitted to NC DENR's Customer Service Center,<sup>457</sup> either through its web page or via a toll-free phone number. The complaint is then be routed to the appropriate divisional contact. The NC DENR Environmental Justice Coordinator is developing materials providing specific guidance on making environmental justice complaints and structuring a process of responding to such complaints.<sup>458</sup>

### Other programs

An official at the NC DENR explained that most of DENR's socioeconomic review currently occurs within the permitting and compliance assistance processes.<sup>459</sup> For example, changes to NC DENR's dry cleaning regulations were translated into Korean and circulated amongst the Korean-speaking population so that the regulated community would be aware and understand the impacts of the new environmental regulations.<sup>460</sup>

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## **NORTH DAKOTA**

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of North Dakota. As of 2005, an attorney at the North Dakota Attorney General's Office confirmed that North Dakota does not have any formal environmental justice policy.<sup>461</sup>

## **OHIO**

Although there is no corresponding state law or policy regarding environmental justice, the Ohio Environmental Protection Agency ("Ohio EPA") evaluates environmental justice issues as part of its normal processes, whether it be permitting or grant review, on a case-by-case basis. For instance, the Ohio EPA considers all comments regarding environmental justice to ensure that the agency is in compliance with Title VI.<sup>462</sup>

### **Statute**

In order to receive a permit to open a new solid waste facility or modify an existing one, Ohio law requires a "public information session and a public hearing on the application within the county in which the new or modified solid waste facility is or is proposed to be located or within a

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<sup>457</sup> Electronic mail from Mary Penny Thompson, *supra* note 454.

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> Telephone interview with Lyle Witham, Deputy Assistant Attorney General, North Dakota Attorney General's Office (March 3, 2005).

<sup>462</sup> Electronic mail from Bill Fischbein, Deputy Director for Legal Affairs, Ohio EPA (Jan. 31, 2005).

contiguous county.”<sup>463</sup> The proponent must publish a notice of the project and hearing in local newspapers. Similar requirements are described for hazardous waste facilities.<sup>464</sup>

## Programs

Ohio EPA seeks to increase the involvement of community groups that represent historically underprivileged areas.<sup>465</sup> For example, Ohio EPA works closely with the St. Clair Superior Neighborhood Development Association (SCSNDA) Environmental Workgroup to increase environmental awareness and compliance in the community. The result has been increased public participation and input in the development of Title 5 Air Permits, increased inspections of companies and resolutions of neighborhood concerns, and better assurance to the neighborhood that companies are in compliance with their environmental permits.<sup>466</sup>

Ohio EPA has also partnered with the Earth Day Coalition's Sustainable Cleveland Partnership (“SCP”), a local initiative in neighborhood-based environmental protection for low-income and/or minority communities. “SCP organizes tours of industrial parks, participates in public hearings and media events, leads citizen campaigns on pollution prevention for large stationary sources, and builds capacity in a variety of minority constituent groups including citizens' councils, street and block clubs, community centers and development associations, and schools and churches.”<sup>467</sup> Subjects of SCP training workshops have included right-to-know laws, environmental risk regulation and reduction, and environmental audits of specific neighborhoods.<sup>468</sup>

## Case

### *Waste Management of Ohio, Inc. v. Bd. of Health of City of Cincinnati* (2004)

<sup>469</sup>

The Board of Health of the City of Cincinnati denied an application for a license to operate a solid waste transfer station. On appeal, the Ohio Environmental Review Appeals Commission reversed the Board of Health's decision. The Commission noted that as “[t]here is no specific environmental justice law in Ohio . . . [and] environmental justice concerns could not form a basis for a lawful denial of a license for a transfer station.” Accordingly, the Commission refused to hear evidence relating to environmental justice claims and the disproportionate impacts of the transfer station.<sup>470</sup>

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<sup>463</sup> OHIO REV. CODE ANN. § 3734.05(A)(2)(e) (2003).

<sup>464</sup> *Id.* at § 3734.05(D)(3)(b).

<sup>465</sup> *Id.*

<sup>466</sup> Electronic mail from Bill Fischbein, Deputy Director for Legal Affairs, Ohio EPA (March 22, 2006). The neighborhood receives copies of inspection reports and permits for companies of concern.

<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

<sup>469</sup> *Waste Management of Ohio, Inc. v. Bd. of Health of City of Cincinnati*, 2004 Ohio ENV LEXIS 3 (Ohio Envtl. Rev. Apps. Comm'n Mar. 25, 2004).

<sup>470</sup> *Id.* at \*8.

## **OKLAHOMA**

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of Oklahoma.

## **OREGON**

Former Governor John Kitzhaber's created the Governor's Environmental Justice Advisory Board in 1997, but the Advisory Board's operation is no longer funded.<sup>471</sup> The Oregon Department of Environmental Quality ("DEQ") does not have a formal EJ policy. An internal EJ policy related to the work of the former Governor's Advisory Board exists, "but it is not actively practiced or promoted."<sup>472</sup> According to DEQ, "staff incorporate EJ ... as it fits within the resources available; however, we do not have any funding to do formal EJ work."<sup>473</sup>

### **Executive Order**

#### **Environmental Justice Advisory Board**

On August 1, 1997, Oregon Governor John Kitzhaber issued Executive Order 97-16 creating the Governor's Environmental Justice Advisory Board ("Advisory Board"). This Advisory Board was created to supplement the recommendations issued by the Oregon Environmental Equity Citizen Advisory Committee in 1994.<sup>474</sup> In early 1999, the Advisory Board issued a report containing policy recommendations for the state.

The Advisory Board defined environmental discrimination as any policy, practice, or directive that generates environmental impacts that disadvantage groups or communities based on race, color, national origin or economic background. This discrimination includes lesser enforcement of environmental standards and practices that limit participation by these same people in decision making.<sup>475</sup> The report made several recommendations for state agencies including:

1. Encourage partnerships between communities, industries and government agencies;
2. Correlate data on pollution, permitting, compliance and violations with information on race and socioeconomic status to determine whether patterns of bias exist;
3. Make cumulative impacts of siting and other permitting activities an important factor in environmental regulation and decision making; and

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<sup>471</sup> Oregon Executive Order 97-16, Aug. 1, 1997, *available at* [http://arcweb.sos.state.or.us/governors/Kitzhaber/web\\_pages/governor/legal/execords/eo97-16.pdf](http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo97-16.pdf) (last visited Apr. 24, 2006); *Boards and Commissions Book*, *available at* <http://governor.oregon.gov/Gov/pdf/forms/brdbook.pdf> (last visited Apr. 28, 2006); telephone interview, Office of the Governor, May 1, 2006..

<sup>472</sup> Electronic mail from Patti Seastrom, Assistant to the Administrator at April 28, 2006 (on file with authors).

<sup>473</sup> *Id.*

<sup>474</sup> Governor's Environmental Justice Advisory Board, *Implementation of Environmental Justice in Oregon Natural Resource and Environmental Agencies: 1998 Annual Report* (Feb. 1999), at 1 (on file with authors).

<sup>475</sup> *Id.*



4. Form a citizen position within state environmental and natural resource agencies, responsible for providing access to citizens of the permitting process and advocating for communities in the process.<sup>476</sup>

In June 2000, Governor Kitzhaber appointed new members to the twelve person Advisory Board. The Advisory Board then included individuals representing minority and low-income communities, environmental interests, industry, and members representing the different geographic regions of the State.<sup>477</sup> Due to a lack of funding, the Advisory Board is currently inactive under Governor Kulongoski.<sup>478</sup>

### **Supplemental Environmental Projects**

In settling environmental enforcement actions, Oregon Department of Environmental Quality (“ODEQ”) may allow violators to mitigate their penalties by completing a Supplemental Environmental Project (“SEP”).<sup>479</sup> In considering whether to approve a SEP, ODEQ encourages several types of projects, including those that result in “environmental enhancement or restoration, environmental justice (addressing any undue burden of environmental hazards historically placed on minority and low income groups), and increased public awareness and education.”<sup>480</sup>

### **Contact**

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## **PENNSYLVANIA**

### **Policy**

In 2004, the Department of Environmental Protection (“PA DEP”) issued its *Environmental Justice Public Participation Policy*. Under the policy, if a proposed permit affects an area with either a 20% poverty or 20% minority population, enhanced public participation is required as part of the permitting procedure.<sup>481</sup> The policy aimed at creating greater community awareness and building

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<sup>476</sup> *Id.*

<sup>477</sup> Oregon Executive Order EO-00-05 (April 2000), available at [http://arcweb.sos.state.or.us/governors/Kitzhaber/web\\_pages/governor/legal/execords/eo00-05.pdf](http://arcweb.sos.state.or.us/governors/Kitzhaber/web_pages/governor/legal/execords/eo00-05.pdf) (last visited Apr. 24, 2006).

<sup>478</sup> *Boards and Commissions Book*, available at <http://governor.oregon.gov/Gov/pdf/forms/brdbook.pdf> (last visited Apr. 28, 2006); Telephone interview, Office of the Governor, May 1, 2006.

<sup>479</sup> Oregon Dept of Environmental Quality, *Civil Penalty Mitigation for Supplemental Environmental Projects* (Sept. 23, 2000), available at [www.deq.state.or.us/programs/enforcement/enforcementSEPDDir.pdf](http://www.deq.state.or.us/programs/enforcement/enforcementSEPDDir.pdf) (last visited Apr. 24, 2006).

<sup>480</sup> *Id.* at 2.

<sup>481</sup> Pennsylvania Dep’t of Environmental Protection, 34 Pa.B. 2237 (April 24, 2004), modified by 35 Pa.B. 68 (Jan. 1, 2005); telephone interview with Ayanna King, Director, Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate (Dec. 13, 2005).

stronger stakeholder groups.<sup>482</sup> According to a 2005 notice filed by PA DEP, however, “corrections were made ... to accurately reflect that participation by permit applicants in the enhanced public participation objectives of the policy is voluntary.”<sup>483</sup>

## Programs

In 1999, Pennsylvania established the Environmental Justice Work Group to review PA DEP programs and ensure equity in its environmental protection efforts. The Work Group completed a report in June 2001 recommending that the PA DEP: (1) implement a 10-step procedure for the permitting of certain activities in minority and low-income communities that would require enhanced public participation and assessments of cumulative and disparate impacts; (2) require greater community involvement in the monitoring of facilities; (3) create additional means to ensure the adequate enforcement and appropriate assessment of penalties; and (4) establish an Environmental Justice Advisory Board in order to facilitate communication with communities.<sup>484</sup>

### Environmental Justice Advisory Board

The Environmental Justice Advisory Board (“EJAB”) was created in response to the recommendations made by the Environmental Justice Work Group report.<sup>485</sup> EJAB advises PA DEP on how to implement the recommendations made in the Environmental Justice Work Group Report. EJAB has completed an action plan that details how the agency will phase in the recommendations from the 2001 report.<sup>486</sup> With quarterly meetings, EJAB looks at the current case law to determine how court judgments impact environmental justice. Taking into consideration changing case law, EJAB continues to make recommendations for refining and implementing the goals of the 2001 report.

### On-Line EJ Discussion Areas

Previously, PA DEP sought to encourage public participation through its Environmental Justice Advisory Board on-line discussion area.<sup>487</sup> The on-line discussion area allowed citizens to post comments related to four of its subcommittees.<sup>488</sup> However, DEP has since removed all discussion boards due to improper use, as individuals were abusing the online forum instead of using it to address environmental justice issues.<sup>489</sup>

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<sup>482</sup> Interview with Ayanna King, *id.*

<sup>483</sup> Pennsylvania Dep’t of Environmental Protection, 35 Pa.B. 68 (Jan. 1, 2005).

<sup>484</sup> Pennsylvania Dep’t of Environmental Protection, *Environmental Justice Work Group Report to the Pennsylvania Department of Environmental Protection* (June 2001), available at <http://www.depweb.state.pa.us/environadvocate/lib/environadvocate/EJReportFinal.pdf> (last visited March 22, 2006).

<sup>485</sup> Pennsylvania Dep’t of Environmental Protection, “New Environmental Justice Advisory Board Holds First Meeting,” <http://www.dep.state.pa.us/dep/deputate/polycomm/update/05-03-02/0503026089.htm> (last visited March 22, 2006).

<sup>486</sup> Pennsylvania Dep’t of Environmental Protection, “Environmental Justice Work Group Report Action Plan” (June 2002), *formerly available at* <http://www.dep.state.pa.us/hosting/environmentaladvocate/docs/EJABActionPlanJune2002.htm> (last visited Oct. 10, 2003).

<sup>487</sup> Pennsylvania Dep’t of Environmental Protection, “Environmental Justice Advisory Board Discussion Forum,” *formerly available at* <http://www.dep.state.pa.us/discussion.environmentaladvocate/> (last visited June 26, 2003).

<sup>488</sup> Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate, “Message Boards,” *formerly available at* <http://www.dep.state.pa.us/hosting/environmentaladvocate/discussion> (last visited June 26, 2003).

<sup>489</sup> Telephone interview with Ayanna King, *supra* note 481.

## Office of Environmental Advocate

The Pennsylvania Office of Environmental Advocate (“POEA”) was also created as a result of the Environmental Justice Work Group Report.<sup>490</sup> The office was set up “as a point of contact for Pennsylvania’s residents.”<sup>491</sup> Its goal is to “increase communities’ environmental awareness and involvement.”<sup>492</sup> The POEA staff includes Regional Advocates charged with ensuring environmental justice compliance in certain regions of Pennsylvania.<sup>493</sup>

To achieve this goal, POEA notifies citizens of proposed permits affecting their community, reviews existing PA DEP programs and policies “to ensure equal protection,” and ensures that citizen environmental justice concerns are responded to in a timely manner.<sup>494</sup> POEA works with permit applicants to carry out the public participation process, and ensure there are plain language summaries to promote community understanding. At community meetings, community members are thereby better equipped to inform the industry of their concerns.<sup>495</sup> POEA has also set up several processes to promote community involvement, including an e-mail notification system to apprise interested parties of the status of specific permit applications as they move through the PA DEP permitting process.<sup>496</sup> POEA e-mails notices when PA DEP Draft Technical Documents are open for public comment.<sup>497</sup>

## Open Access to Permit Applications and Violations

In June 2004, PA DEP updated its Environmental Facility Application Compliance Tracking System (“eFacts”), an on-line environmental compliance reporting system.<sup>498</sup> The revamped system offers more search options, by allowing a user to search by authorization, client, facility, inspection, name, site, or site by municipality. eFacts “provides the public with multiple options and tools to view environmental/compliance information on regulated facilities as well as information on permitting, licensing and pending applications.”<sup>499</sup>

## **Performance Partnership Agreement**

In September 2002, US EPA and PA DEP signed a performance partnership agreement. The agencies agreed to work to implement the recommendations of the Pennsylvania

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<sup>490</sup> Pennsylvania Dep’t of Environmental Protection, Office of Environmental Advocate, <http://www.dep.state.pa.us/hosting/environmentaladvocate/default.htm> (last visited March 22, 2006).

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> Office of Environmental Advocate, *Brochure*

<http://www.dep.state.pa.us/eps/docs/cab200149b1126000/fldr200149d1642109/fldr20021b92521000/doc200336a2436005/0130-PA-DEP2730.pdf> (last visited March. 20, 2006).

<sup>495</sup> Telephone interview with Ayanna King, *supra* note 481.

<sup>496</sup> See e.g., Pennsylvania Dep’t of Environmental Protection, *E-notice Pennsylvania*, <http://www.dep.state.pa.us/enotice/>; *DEP Fact Sheet*

<http://www.dep.state.pa.us/dep/hess/legacy/FS3016PromotingEffectivePubPartic.htm> (All sites last visited March 22, 2006).

<sup>497</sup> *Id.*

<sup>498</sup> Pennsylvania Dep’t of Environmental Protection, *E-facts*, <http://www.dep.state.pa.us/efacts/> (last visited Mar. 22, 2006).

<sup>499</sup> *Id.*

Environmental Justice Work Group.<sup>500</sup> Specifically, a main priority was reducing detrimental environmental exposure to citizens, including sensitive populations. PA DEP agreed to work with US EPA to identify areas of the Commonwealth with elevated occurrences of infectious and chronic disease related to environmental exposures.<sup>501</sup>

## Cases

### *Eagle Environmental v. Penn. DEP (2005)*

Relying on statutory authority, the Pennsylvania DEP's Environmental Quality Board issued permit review regulations for the siting of landfills. The regulations require that applicants specify 1) the known impacts of the landfill (*e.g.*, effects on the environment, public health and safety); and 2) known and potential environmental harms, supply mitigation plans. At issue in the case was the third requirement, a balancing test requiring that the public benefits of a landfill clearly outweigh its articulated and potential environmental harms (including social harms).<sup>502</sup> Eagle Environmental challenged the treatment of its permit application, which DEP had conditionally approved subject to the applicant's actually providing the benefits promised.

The Pennsylvania Supreme Court found that the harm/benefit balancing test was a "flexible and effective means to implement and enforce" the authorizing waste management statutes. Furthermore, the court observed that the legitimacy of the regulation was strengthened by the act's reference to the Commonwealth's constitutional guarantee of the people's "right to clean air, pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment."<sup>503</sup> This point builds on prior Pennsylvania cases, which had viewed the state constitution as requiring DEP to balance its responsibilities to protect the environment and to provide needed services to the public.<sup>504</sup>

### *Coley v. Commonwealth of Pennsylvania (2004)*

Denying the Commonwealth's motion to dismiss challenges to an air permit, the State Environmental Appeals Board found that: (1) petitioner should be given an opportunity to prove their claims of intentional discrimination; and (2) the Commonwealth should have considered the need to control fine particulate matter to address petitioners' concerns, notwithstanding the absence of a specific directive to do so.<sup>505</sup>

## Contact

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<sup>500</sup> Pennsylvania Association of Conservation Districts, *PACD News*, <http://www.pacd.org/news/october%2002/p3.htm> (last visited March 22, 2006).

<sup>501</sup> *Id.*

<sup>502</sup> *Eagle Environmental, L.P. v. Commonwealth of Pennsylvania*, 884 A.2d 867, (Pa. 2005). This case does not expressly reference "environmental justice," but is included as exemplifying the trend that state constitutional rights to a clean environment are interpreted as supporting or requiring procedural safeguards, benefiting environmental justice communities. See discussion of Louisiana case law, *supra* notes 282-84, and accompanying text, for similar support for environmental analysis being required before permit approvals, notwithstanding the absence of a state environmental assessment statute.

<sup>503</sup> *Eagle*, 884 A.2d at 879, citing Pennsylvania Constitution, art. I, § 27.

<sup>504</sup> See, *e.g.*, *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), *aff'd*, 361 A.2d 263, 273 (Pa. 1976).

<sup>505</sup> *Coley v. Commonwealth of Pennsylvania*, No. 2003-26-K, 2004 Pa. Environ. LEXIS 47 (July 16, 2004).

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## **RHODE ISLAND**

### **Statute**

#### **Environmental Remediation**

Rhode Island's Industrial Property Remediation and Reuse Act ("IPRARA") mandates that the Rhode Island Department of Environmental Management ("RI DEM") "shall consider the effects that clean-ups would have on the population surrounding each site and shall consider the issues of environmental equity for low-income and racial minority populations."<sup>506</sup> RI DEM must develop and implement a process to "ensure community involvement throughout the investigation and remediation of contaminated sites. The process is to include, but is not limited to, the following components: (1) notification to abutting residents when a work plan for a site investigation is proposed; (2) adequate availability of all public records concerning the investigation and clean-up of the site, including, where necessary, the establishment of informational repositories in the impacted community; and (3) notification to abutting residents, and other interested parties, when the investigation of the site is deemed complete by the department of environmental management."<sup>507</sup>

In response to the *Hartford Park* case discussed below, RI DEM proposed a change to IPRARA in the 2005-2006 legislative session. The amendment, enacted in July of 2006, provides for public participation earlier in the site selection process when: (1) the proposed use is sensitive (*e.g.* public recreational facility or day-care ), and (2) one or more of the sites under consideration is contaminated.<sup>508</sup> The enhanced protections also result in a written report incorporating analysis and public comments, and, absent exigencies, no work may be performed on the site until the public meeting has been held and the comment period has closed.<sup>509</sup>

### **Policy**

RI DEM's Environmental Equity Policy is in draft form. RI DEM requests public input regarding both the draft policy statement and specific implementation guidelines.<sup>510</sup> The draft policy adopts the customary definition of environmental justice: "no person or particular group of persons suffers disproportionately from environmental degradation or intentional discrimination, or is denied enjoyment of a fair share of environmental improvements." Notably, RI DEM seeks to bring the consideration of environmental justice forward to the early stages of decision making, out of the belief that late input rarely achieves environmental justice aims: its "objective is to provide for proactive consideration of environmental equity concerns, in early stages, before case-specific decisions such as regulatory approvals are made."<sup>511</sup>

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<sup>506</sup> R.I. GEN. LAWS § 23-19.14-5(a) (2003).

<sup>507</sup> *Id.*, see also § 23-19-13.4 (describing host community assessment committees and their role in siting decisions).

<sup>508</sup> Electronic mail from Michele Musselman (March 17, 2006) (on file with authors); SB 3113 (2006), *codified at* 23-19.14-5(a)(4)(I).

<sup>509</sup> *Id.*

<sup>510</sup> Rhode Island Dep't of Environmental Management, *Draft Environmental Equity Policy* (2002), <http://www.state.ri.us/dem/pubs/eequity.htm> (last visited Jan. 22, 2006).

<sup>511</sup> *Id.*

## Study

RI DEM reported on environmental equity in its 2002 *Environmental Equity in Rhode Island Progress Report*.<sup>512</sup> According to the *Progress Report*, the Office of Legal Services is to undertake a review of all RI DEM policies and regulations to evaluate their effect on environmental equity. The study is meant to generate specific recommendations regarding how environmental equity “can be considered as early and effective as possible in planning and decision making process,” and which regulations and policies should incorporate environmental equity provisions.<sup>513</sup> The study will focus on public notice, interagency issues, cumulative impacts, and “opportunities for proactive and community-based decision making.”<sup>514</sup>

## **Programs & Services**

### Outdoor Recreation and Community Farming Programs

One aspect of RI DEM’s concern for environmental equity is a focus on “Open Space and Recreation Opportunities.” RI DEM recognizes that “[e]ven small pockets of greenspace/openspace in urban areas have many positive environmental, quality of life and public health impacts including environmental revitalization, air quality improvements, energy savings, etc.”<sup>515</sup> In addition to making urban, disadvantaged communities healthy and environmentally sound, RI DEM also seeks to make those areas desirable places to live. For example, RI DEM has amended recreational grant regulations to encourage more recreational development in disadvantaged communities by considering the “geographic disparities in the allocation of recreational resources throughout the state when considering grant applications.”<sup>516</sup>

### Partnership with Academia -- Potential Exposure Analysis

In 2001, RI DEM’s Office of Strategic Planning and Policy hired two graduate students from Brown University to conduct a GIS analysis “to consider the size and significance of separate and aggregated environmental impacts, geographic and demographic information.”<sup>517</sup> This study analyzed the proximity of populations to environmental risks including, among other things, air emissions, wastewater treatment facilities, and power plants. The students mapped demographic, racial, and income census data and compared it to pollution source data.<sup>518</sup> The study provided the state with a quantifiable method for identifying populations that are exposed to a disproportionate amount of environmental hazards.<sup>519</sup> After completing the study,<sup>520</sup> the students conducted a similar study on a finer scale, focusing on the city of Providence.<sup>521</sup>

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<sup>512</sup> Rhode Island Dep’t of Environmental Management, *Environmental Equity in Rhode Island Progress Report*, available at <http://www.dem.ri.gov/pubs/eeqprog.pdf> (last visited March 17, 2006).

<sup>513</sup> *Id.* at 20.

<sup>514</sup> *Id.*

<sup>515</sup> *Id.* at 13.

<sup>516</sup> *Id.*

<sup>517</sup> *Id.*

<sup>518</sup> *Id.* at 8-12. The pollution source data included, among other things, locations of power plants, hazardous waste generators, and auto body shops.

<sup>519</sup> *Id.* at 8.

<sup>520</sup> Amanda B. Aretz and Rachael E. Moeller, *Air Quality and Comparative Exposure* [http://envstudies.brown.edu/thesis/2002/moeller/title\\_page.htm](http://envstudies.brown.edu/thesis/2002/moeller/title_page.htm) (last visited March 17, 2006).

<sup>521</sup> *Environmental Equity in Rhode Island, Progress Report*, *supra* note 512.



## Performance Partnership Agreement

RI DEM's PPA with US EPA incorporates RI DEM's 2002-2003 Strategic Workplan; RI DEM has identified environmental equity (defined as "the equal rights to environmental quality and protection from environmental degradation") as a strategic priority.<sup>522</sup> RI DEM noted its intention to address environmental equity in the "early stages of planning and decision-making, rather than through after-the-fact challenges to...individual permit decisions."<sup>523</sup> The policy requires RI DEM "to report on and publicly evaluate its efforts on an annual basis."<sup>524</sup> In addition, RI DEM and US EPA identified the joint target of "ensur[ing] environmental equity for all Rhode Islanders," with an indicator of success in this goal the amendment of RI DEM's "policies and regulations ... to incorporate environmental equity considerations by 2003."<sup>525</sup>

## Case

### Hartford Park Tenants Association (2005)

Plaintiffs invoked IPRARA's section 5(a) in challenging RI DEM's conduct when issuing a permit for a school to be sited on a former landfill, near a predominantly African-American and Latino, low-income population.<sup>526</sup> Specifically, plaintiffs contended that RI DEM failed to consider environmental justice issues, and did not provide an opportunity for effective public participation as required by IPRARA. The court agreed, stating that while the site investigation was thorough and the site remedy exceeded that which could have been required by law or regulation, RI DEM failed "to develop and implement a process that ensured community involvement." Specifically, RI DEM did not ensure that abutters received notice of the impending actions, and failed to provide access to the relevant public records near the site. In addition, RI DEM did not heed the requirements of section 5(a), in failing to consider environmental equity in the conducting the site investigation of the former landfill. The court rejected Title VI and section 1983 claims.<sup>527</sup>

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<sup>522</sup> Rhode Island Dep't of Environmental Mgmt and US EPA, *Performance Partnership Agreement* (FY 2002-2003), at 5, available at <http://www.state.ri.us/dem/pubs/plan2002/ppa0203.pdf> (last visited March 17, 2006).

<sup>523</sup> *Id.* at 6.

<sup>524</sup> *Id.*

<sup>525</sup> *Id.* at Appendix C.

<sup>526</sup> *Hartford Park Tenants Ass'n v. R.I. Dep't of Env'tl. Mgmt.* 2005 R.I. Super. Lexis 148 (Sup. Ct. R.I. 2005), citing R.I. GEN. LAWS §23-19.14.1-1.

<sup>527</sup> *Hartford Park*, 2005 R.I. Super. Lexis at 175.

## **SOUTH CAROLINA**

### **Programs & Services**

The Department of Health and Environmental Control (“DHEC”) does not have a formal environmental justice policy, but has previously studied environmental justice issues. In 1995, Ms. Lill Mood, a registered nurse formerly with DHEC, organized a Future Search Conference where she brought together a balanced group of stakeholders to find common ground on environmental justice issues.<sup>528</sup> Under the direction of DHEC, Ms. Mood conducted two studies: one on siting and one on enforcement in order to identify gaps or weaknesses in the process. The studies helped the DHEC focus on what areas are particularly vulnerable, and as a result, DHEC collaborated with US EPA on a Community Based Environmental Protection Project in one of those areas.<sup>529</sup> The studies also made several recommendations to DHEC with respect to implementing public participation into the permitting process, though these were never formally acted upon.<sup>530</sup>

The Office of Environmental Quality Control (“EQC”), the environmental regulatory arm of DHEC, currently has an EJ Coordinator who addresses community concerns with respect to EQC permitting and other activities.<sup>531</sup> The EJ Coordinator has participated in the EQC Public Participation Plain Language Taskforce, which is developing ways for EQC to disseminate information to the public about permitting and other agency actions.<sup>532</sup> The goal of the program is to encourage greater public participation by providing information in non-technical terms.<sup>533</sup>

DHEC has not created a formal environmental justice policy, and no policy is foreseeable. Instead, there is a strong effort to increase public participation. The agency’s belief is that by being proactive and involving citizens early in the process, will address environmental concerns through community input rather than use of a formal environmental justice policy.<sup>534</sup>

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## **SOUTH DAKOTA**

The authors did not find any relevant environmental justice programs, policies, or statutes for the state of South Dakota. However, a staff attorney from South Dakota Department of Environment and Natural Resources (“DENR”) reported that despite the lack of a formal EJ policy,

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<sup>528</sup> Electronic mail from Lill Mood, Dep’t of Health and Env. Control (Nov. 4, 2000) (on file with authors).

<sup>529</sup> *Id.*

<sup>530</sup> Telephone interview with Nancy Whittle, EJ Coordinator, Dep’t of Health and Env. Control (Oct. 15, 2003).

<sup>531</sup> *Id.*

<sup>532</sup> *Id.*

<sup>533</sup> *Id.*

<sup>534</sup> Telephone interview with Nancy Whittle, EJ Coordinator at DHEC (Nov. 7, 2005).



DENR monitors EJ issues with US EPA and the Environmental Council of states, an association of state environmental administrators.<sup>535</sup>

### **Performance Partnership Agreement**

DENR, the South Dakota Department of Agriculture, and US EPA entered into a performance partnership agreement in 2003.<sup>536</sup> The Department of Agriculture identified environmental justice as one of its top fifteen priorities, along with community-based environmental protection.<sup>537</sup>

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## **TENNESSEE**

### **Policy**

The Tennessee Department of Environment and Conservation (“TDEC”) completed a draft Strategic Plan for environmental justice in 2000, but a change in administration resulted in its being removed from the TDEC website.<sup>538</sup>

### **Programs**

Staff trainings on Title VI and environmental justice issues that began in 2003 continued in 2005 with a focus on civil rights training for managers.<sup>539</sup>

In March 2005, TDEC completed a total reorganization of the Bureau of Environment that created a position for a director of diversity programs, which includes Title VI and Environmental Justice. David Owenby, Director of Public Affairs for TDEC, explained that TDEC has elevated the

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<sup>535</sup> Telephone Interview with Joe Nadenicek, Staff attorney, South Dakota Dep’t of Environment and Natural Resources (Feb. 24, 2005); The Environmental Council of the States, [www.ecos.org](http://www.ecos.org) (last visited April 28, 2006).

<sup>536</sup> *Performance Partnership Grant abstract*, <http://www.state.sd.us/denr/Documents/ppg.htm> (last visited Oct. 16, 2003).

<sup>537</sup> *Id.*

<sup>538</sup> Tennessee Dep’t of Environment and Conservation, *Draft Environmental Justice in the State of Tennessee: A Strategic Plan for the Tennessee Department of Environment and Conservation*, formerly available at <http://www.state.tn.us/environment/epo/ej/plan/index.html>.

The draft plan recommended that TDEC: 1) Establish a framework for implementation within the Department and incorporate environmental justice into Department policies and programs”; 2) “Develop an outreach program that works to empower communities with the tools needed to understand environmental issues important to their respective communities and to participate in the decision making process”; 3) “Establish a statewide Environmental Justice Committee consisting of community members and Department representatives to be in charge of implementing the state’s environmental justice plan”; and, 4) “Collaborate with local government and industry representatives in addressing environmental justice concerns.”

<sup>539</sup> Telephone interview with Linda Sadler, Environmental Assistance Program Manager, Tennessee Dep’t of Environment and Conservation (Oct. 14, 2003); Electronic mail from David Owenby, Director of Public Affairs, Tennessee Dep’t of Environment and Conservation (April 5, 2005).

position in order to demonstrate its importance.<sup>540</sup> In 2006, TDEC filled the Environmental Justice Coordinator position.<sup>541</sup>

Additionally, TDEC began a community outreach program by creating Environmental Field Offices.<sup>542</sup> The field offices are staffed with Environmental Coordinators that act as regional contacts for the Department's EJ program.<sup>543</sup> Among the Coordinators' tasks are coordinating multiple permits for new industries, managing community outreach, and providing compliance information and technical assistance for citizens.<sup>544</sup>

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## TEXAS

### Regulations

In distributing funds under the Clean Water Revolving Fund<sup>545</sup> and the Drinking Water Revolving Fund,<sup>546</sup> Texas requires that a project must comply with federal Executive Order 12,898, which requires federal agencies to incorporate environmental justice principles into their missions.<sup>547</sup>

### Programs & Services

#### Environmental Equity Program

In 1993, the Texas Commission on Environmental Quality ("TCEQ") created an Environmental Equity Program ("Program") to improve communications between government, local communities, and neighboring industries.<sup>548</sup> As part of the Program, TCEQ established an

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<sup>540</sup> Electronic mail from David Owenby, *id.*

<sup>541</sup> Electronic mail from Paul Sloan, Deputy Commissioner, Tennessee Dep't of Conservation and Environment (Oct. 17, 2006).

<sup>542</sup> Telephone interview with Tracy Carter, Environment and Conservation Coordinator, Tennessee Dep't of Conservation and Environment (March 24, 2005).

<sup>543</sup> Tennessee Dep't of Environment and Conservation, "Environmental Field Offices," <http://www.state.tn.us/environment/eac> (last visited March 25, 2006).

<sup>544</sup> *Id.*

<sup>545</sup> Clean Water State Revolving Fund, 31 TEX. ADMIN. CODE § 375.212 (West 2003).

<sup>546</sup> Drinking Water State Revolving Fund, 31 TEX. ADMIN. CODE § 371.18 (West 2003).

<sup>547</sup> Exec. Order No. 12,898, *supra* note 21.

<sup>548</sup> Texas Commission on Environmental Equity, "Environmental Equity: Program Overview," [http://www.tceq.state.tx.us/comm\\_exec/opa/envequ.html](http://www.tceq.state.tx.us/comm_exec/opa/envequ.html) (last visited April 11, 2005).

Environmental Equity Office to address complaints and citizens' actions relating to TCEQ activities. The Program seeks to increase community participation in the regulatory process, “serve as the agency contact to address allegations of injustice,” and promote environmental equity in all communities through the better use of data.<sup>549</sup>

To help facilitate these goals, TCEQ has set up a toll-free number to enable individuals to raise environmental equity concerns. Additionally, TCEQ works to increase staff awareness about environmental equity and justice issues. In particular, the program encourages technical staff to consider that the environmental programs they develop for businesses also affect the communities living around those businesses.<sup>550</sup>

#### State and Tribal Environmental Advisory Panel

In 1999, TCEQ created the State and Tribal Environmental Justice Advisory Panel, which meets quarterly in various communities to exchange information and develop solutions to local concerns.<sup>551</sup>

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#### UTAH

Utah does not have a formal EJ policy or program.

#### **Performance Partnership Agreement**

The PPA between the Utah Department of Environmental Quality (“UDEQ”) and US EPA declares that there will be fair treatment of people of all races, incomes, and cultures with respect to the management of environmental programs.<sup>552</sup> In the PPA, “[f]air treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs.”<sup>553</sup> UDEQ and US EPA agreed “to

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<sup>549</sup> *Id.*

<sup>550</sup> *Id.*

<sup>551</sup> The advisory panel met five times in various Texas cities before the EPA grant ran out in Dec. 2001. *See Id.*

<sup>552</sup> *Utah Department of Environmental Quality Performance Partnership Agreement* (FY 2006), at III-5, available at [http://www.deq.utah.gov/About\\_DEQ/Planning/PPA/2006\\_PPA.htm](http://www.deq.utah.gov/About_DEQ/Planning/PPA/2006_PPA.htm) (last visited March. 20, 2006) (the agreement defining “Environmental Justice” as “the fair treatment and meaningful involvement of people of all races, income, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies”).

<sup>553</sup> *Id.*

conduct all of their base regulatory programs within the framework and spirit of this EJ principle” and “to communicate about EJ issues, grant outreach, and Grantee activities in Utah and [to] continue to assist, upon request, EJ grant funded activities in the state.”<sup>554</sup>

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## **VERMONT**

### **Programs**

The website for the Waste Division of Vermont’s Agency of Natural Resources (“ANR”) includes a statement on environmental justice, and defines it as the “the pursuit of equal treatment and equal protection for all people under environmental statutes and regulations.”<sup>555</sup> The statement was part of a 2001 report on the state’s environmental quality. More recent reports have not included such EJ statements. While the statement does not rise to the level of an EJ policy, it does demonstrate an awareness of environmental justice. The statement explains that avoiding potential environmental injustice issues related to the siting of new landfills and transfer stations provides ANR with additional incentive to curtail consumption, stimulate reuse and recycling, and reduce the flow of trash to existing landfills in the state. Accordingly, ANR has created an ambitious Solid Waste Management Plan to curtail the amount of refuse sent to landfills that may be in environmental justice communities.<sup>556</sup>

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## **VIRGINIA**

### **Statute**

#### **Virginia Waste Management Act – notice and public comment**

The Virginia Waste Management Act (“Act”) requires that “before promulgating any regulations under consideration or granting any variance to an existing regulation, or issuing any

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<sup>554</sup> *Id.*

<sup>555</sup> Vermont Agency of Natural Resources, “Waste,” <http://www.anr.state.vt.us/env01/waste.htm> (last visited Feb. 20, 2006).

<sup>556</sup> Telephone interview with Warren Coleman, General Counsel, Agency of Natural Resources (April 21, 2005).

treatment, storage, or disposal permit, except for an emergency permit, if the Board finds that there are localities particularly affected,” the Board must publish a “notice in a local paper of general circulation at least thirty days prior to the close of any public comment period.”<sup>557</sup> The notice “shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.”<sup>558</sup>

The Act also requires public entities and non-public entities applying for a solid waste facility permit to “seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located.”<sup>559</sup> In addition, public entities applying for a permit must form a citizens' advisory group to assist the entity with the selection of a proposed facility. The locality or public authority proposing the new solid waste facility must also hold “at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.”<sup>560</sup>

## Policy

Virginia began addressing environmental justice concerns in 1993. The resolution required the Joint Legislative Audit Review Commission (“JLARC”) to study the siting, monitoring, and cleanup of solid and hazardous waste facilities, with an emphasis on how waste facilities affect minority communities.<sup>561</sup> In a report to the General Assembly in 1995, the JLARC stated Virginia is home to more than 240 non-hazardous waste facilities, and though there was no evidence of intent, “the analysis revealed that in some cases, siting and monitoring practices have had a disproportionate impact on minority communities.”<sup>562</sup> The JLARC also discovered there are more inspections at waste facilities located in white areas than those located in minority areas.<sup>563</sup>

As a result of the study, JLARC recommended that the Virginia Department of Environmental Quality (“VDEQ”) develop regulations for local governments regarding the process of siting solid waste management facilities; develop a computer mapping database to assist in identifying the racial characteristics of residents affected by permit violations; develop a reporting and inspection system for its waste facilities. JLARC also recommended that the General Assembly consider authorizing penalties for violators of the reporting or inspection systems.<sup>564</sup>

## Supplemental Environmental Projects

Virginia law authorizes VDEQ to allow environmental violators to abate their penalties by completing a Supplemental Environmental Project (SEP), defined as “an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by

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<sup>557</sup> Virginia Waste Management Act, VA. CODE ANN. § 10.1-1402.01 (Michie 2003).

<sup>558</sup> *Id.*

<sup>559</sup> *Id.* at § 10.1-1408.1(B)(4).

<sup>560</sup> *Id.* at § 10.1-1408.1(B)(5).

<sup>561</sup> See Virginia Waste Management Act, VA. CODE ANN. § 10.1 – 1408.1 (Michie 2003) (requiring public participation for permit approval of solid and hazardous waste siting facilities).

<sup>562</sup> Executive Summary, *Joint Legislative Audit and Review Commission of the Virginia General Assembly, Solid Waste Facility Management in Virginia: Impact on Minority Communities* (Jan. 1995), available at Virginia General Assembly, Legislative Information System, Reports to the General Assembly, <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/b9bdf4f9e5dd582e8525616a006f1778?OpenDocument> (last visited March 15, 2006).

<sup>563</sup> *Id.*

<sup>564</sup> Telephone interview with Bob Rotz, Joint Legislative Audit and Review Commission (Nov. 20, 2000).

law.”<sup>565</sup> SEPs are authorized for use in administrative and judicial orders. In order for a SEP to be approved, it is necessary that the “appropriateness and value” of the project be taken into account, and in doing so, the code requires that the impact on “minority or low income populations” be taken into consideration.<sup>566</sup>

## **Performance Partnership Agreement**

In its third PPA, VDEQ agreed to “areas of emphasis,” including one with an environmental justice overtone -- community-based mitigation projects. VDEQ and US EPA together intend to pursue “opportunities to address ozone, [particulate matter] non-attainment and toxics in communities of concern.” Possible projects include analysis and clean diesel projects.<sup>567</sup>

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## **WASHINGTON**

## **Regulation**

The Washington Energy Site Facility Evaluation Council issued a rule, which among other things, establishes a “preapplication consultation” period, and requires applicants to document outreach efforts to communicate with all potentially impacted people, including residents of low-income and minority communities.<sup>568</sup>

## **Programs & Services**

The State of Washington’s Environmental Justice Program is organized within the Sustainability Team of the Department of Ecology (“DOE”), the state’s principal environmental management agency.<sup>569</sup> The Environmental Justice Coordinator and an EJ Committee are both located within the DOE. Along with the common aspirations of pollution prevention and remediation, the DOE also supports sustainable communities and natural resources.<sup>570</sup>

### **The Environmental Justice Checklist**

John Ridgeway, a former Environmental Justice Coordinator, authored the *Environmental Justice Checklist and Resources for Ecology Staff and Management* for the DOE.<sup>571</sup> DOE staffers use the checklist to assess and guide their daily activities, to determine whether their acts implicate EJ issues.

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<sup>565</sup> VA. CODE ANN. § 10.1-1186.2

<sup>566</sup> *Id.*

<sup>567</sup> *Performance Partnership Agreement* (2005), at 3, available at <http://www.epa.gov/ocirpage/nepps/pdf/vadeq-ppa-100105-093007.pdf> (last visited May 2, 2006).

<sup>568</sup> WASH. ADMIN. CODE § 463-60-101 (2004).

<sup>569</sup> Washington Dep’t of Ecology, “Sustainability Team,” <http://www.ecy.wa.gov/sustainability> (last visited Feb. 20, 2006); “Environmental Justice Committee,” formerly available at <http://www.ecy.wa.gov/quality/archive/Year2002/2002.html> (last visited Aug. 20, 2003).

<sup>570</sup> Washington Dep’t of Ecology, “Home Page,” <http://www.ecy.wa.gov> (last visited Feb. 20, 2006).

<sup>571</sup> The checklist is on file with the authors.

The checklist encourages DOE staff to think broadly about what communities might be affected by the agency's actions. Staff should consider the "cumulative effects" of possible environmental pollution and work with other officials such as experts in public health and mapping. The checklist also directs staff to consider whether minority groups with language and cultural barriers may need special accommodations, such as translation services, to create effective discussion around environmental justice issues.<sup>572</sup>

### Language Translation Teams

A more recent project includes the development of a language mapping tool, based on the 2000 Census and GIS mapping files in the DOE, to better identify areas in Washington with significant populations that do not speak English as a primary language.<sup>573</sup> DOE has attempted to better understand which languages should be considered for translation assistance in order to facilitate public outreach on cleanup and other activities. DOE has five formal language translation teams: Spanish, Korean, Chinese, Russian and Vietnamese. The Russian team was added in 2004.<sup>574</sup>

### Washington State Board of Health

The Washington State Board of Health ("WSBH") designated environmental justice as one of its five priority focus areas between 1999 and 2001, culminating in the adoption of a report on environmental justice.<sup>575</sup> The report contained three broad recommendations including that (1) WSBH and DOE conduct better coordination on EJ issues; (2) state and local agencies improve their capacity to address environmental justice issues by providing educational opportunities for their staff; and (3) state and local agencies consider adopting environmental justice guidelines. The report suggested various strategies to implement these recommendations.<sup>576</sup> In addition, WSBH's website provides the public with general information about EJ as well as contact information and links to Washington state and federal agencies with EJ policies or programs.<sup>577</sup>

### **Performance Partnership Agreement**

The PPA between DOE and US EPA includes the general language defining environmental equity/justice as "the fair treatment and meaningful involvement of all people regardless of race, age, gender, national origin, education, or income level in the development, implementation, and enforcement of environmental laws, regulations, and policies."<sup>578</sup> US EPA and DOE agreed to monthly telephone calls to identify current environmental justice issues and events in Washington, with the goal of increasing "both agencies' knowledge of Environmental Justice issues and

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<sup>572</sup> *Id.*

<sup>573</sup> Electronic mail from John Ridgeway, Information Management and Planning Section, Dep't of Ecology, (Feb. 23, 2005).

<sup>574</sup> *Id.*

<sup>575</sup> Washington State Board of Health, "Environmental Justice," *formerly available at* <http://www.doh.wa.gov/sboh/Priorities/EJustice/default.htm> (last visited Oct. 13, 2003); *archived on the Internet at* <http://web.archive.org/web/20041204221517/http://www.doh.wa.gov/sboh/Priorities/EJustice/default.htm> (last visited Jan. 22, 2007).

<sup>576</sup> Washington State Board of Health Environmental Justice Committee, *Final Report State Board of Health Priority: Environmental Justice*, at pp 5-6, *available at* <http://www.doh.wa.gov/sboh/Pubs/2001EJReport.pdf> (last visited Jan. 6, 2006).

<sup>577</sup> "Environmental Justice," *supra* note 575.

<sup>578</sup> *Environmental Performance Partnership Agreement for July 1, 2002 to June 30, 2003*, at 9, *available at* <http://www.ecy.wa.gov/pubs/0101002.pdf> (last visited Feb. 20, 2006).



identify[ing] areas for collaboration on these issues.”<sup>579</sup> Further, the agencies agreed to participate in the Washington State Interagency Environmental Justice Work Group, to host an EJ networking meeting, and to participate in National Environmental Justice Advisory Council meetings.<sup>580</sup> Since the creation of the group, three meetings have been held including representatives from DOE, the Department of Health, the State Board of Health, the Department of Transportation, the Department of Fish and Wildlife, the Department of Natural Resources, and legislative staff.<sup>581</sup>

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## WEST VIRGINIA

### Policy

The West Virginia Department of Environmental Protection (“DEP”) issued an Environmental Equity Policy on December 15, 2003.<sup>582</sup> The policy states that DEP will, “within its authority, ensure that no segment of the population, because of its status as low income or minority community, or any other factors relating to its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits.”<sup>583</sup> DEP seeks to incorporate environmental equity into its program development and implementation, policy making, and regulatory activities.<sup>584</sup>

Within DEP is the quasi-independent Office of the Environmental Advocate, established in 1994.<sup>585</sup> The Environmental Advocate works on behalf of West Virginia residents requesting help with DEP processes. For example, the advocate may help clarify the public comment process, explain how to appeal agency decisions or how to file a Freedom of Information Act request, or describe the best method for getting agency attention for a community problem.<sup>586</sup> The current Environmental Advocate has also been assisting with DEP mailing lists. DEP allows people to register with the department to receive notices regarding permitting, public notices, and DEP news.<sup>587</sup> The Environmental Advocate has contributed to the program by sending e-mails to environmental justice community members that have not registered with the DEP mailing list, but might find particular notices of interest.<sup>588</sup>

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<sup>579</sup> *Id.* at 17

<sup>580</sup> *Id.*

<sup>581</sup> Electronic mail from John Ridgeway, *supra* note 573.

<sup>582</sup> Electronic mail from Pam Nixon, Environmental Advocate, Dep’t of Environmental Protection (Jan. 27, 2005).

<sup>583</sup> West Virginia Dep’t of Environmental Protection, Environmental Equity Policy, *available at* [http://www.dep.state.wv.us/Docs/5353\\_EnviroEquity%20Policy.pdf](http://www.dep.state.wv.us/Docs/5353_EnviroEquity%20Policy.pdf) (last visited Feb. 20, 2006).

<sup>584</sup> *Id.*

<sup>585</sup> WEST VIRGINIA CODE § 22-20-1 (2003).

<sup>586</sup> West Virginia Dep’t of Environmental Protection, “Office of Environmental Advocate,” <http://www.dep.state.wv.us/item.cfm?ssid=17&sslid=162> (last visited Feb. 20, 2006).

<sup>587</sup> West Virginia Dep’t of Environmental Protection, “DEP Mailing Lists,” <http://www.wvdep.org/MailingLists.cfm> (last visited Feb. 20, 2006).

<sup>588</sup> Telephone interview with Pam Nixon, Environmental Advocate, Dep’t of Environmental Protection (Feb. 17, 2005).



## Case

### Longview Power, LLC (2004)

In denying the project proponent's petition to strike testimony related to disproportionate impacts from a proposed power plant, the State Services Commission held that the testimony was probative of "whether the siting certificate is in the public interest."<sup>589</sup>

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## WISCONSIN

## Programs & Services

### Land Recycling Loan Program

The Wisconsin Department of Natural Resources ("WDNR") provides low cost loans for brownfield remediation projects at "landfills, sites or facilities where contamination has affected or threatens to affect groundwater or surface water."<sup>590</sup> WDNR scores loan applications according to its regulations, prioritizing the higher scoring projects in times of tight funding.<sup>591</sup> Significantly, the scoring system provides that "[a] site where remediation of environmental contamination will improve environmental justice shall be assigned one point."<sup>592</sup> "Environmental justice" is defined as "the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."<sup>593</sup>

### Wisconsin Department of Transportation

The state's first Environmental Justice Conference was held in February 2003, sponsored by the Wisconsin Department of Transportation ("DOT").<sup>594</sup> The conference's goal was to reach out to members of the community and receive their input regarding transportation decisions and planning.

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<sup>589</sup> No. 03-1860-E-CS-CN, 2004 W.Va. PUC LEXIS 1769 (Apr. 20, 2004).

<sup>590</sup> Wisconsin Dep't of Natural Resources, "Land Recycling Loan Program," <http://www.dnr.state.wi.us/org/caer/cfa/EL/Section/brownfield.html> (last visited Feb. 7, 2006).

<sup>591</sup> WIS. ADM. CODE § NR 167 *et seq.* (2003).

<sup>592</sup> WIS. ADM. CODE § NR 167.07 (2)(j).

<sup>593</sup> WIS. ADM. CODE § NR 167.03 (4).

<sup>594</sup> See Wisconsin Dep't of Transportation, "Environmental justice - All voices build better transportation solutions," available at <http://www.dot.wisconsin.gov/projects/env/justice/docs/summary.pdf> (last visited Apr. 29, 2006).

In 2004, DOT merged its environmental, civil rights, and disadvantaged business enterprise programs to create the Bureau of Equity and Environmental Services (“BEES”).<sup>595</sup> In creating BEES, DOT seeks to strengthen the focus, visibility, and coordination of its environmental and social justice programs. BEES is now in the process of assessing DOT’s environmental justice practices and procedures with a view to recommending policy directions for planning and project development and implementation, and developing additional guidance to project staff and consultants in meeting DOT’s environmental justice objectives.<sup>596</sup>

In January 2004, a research administrator for DOT prepared a report on best practices for involving disadvantaged populations, defined as elderly, disabled, and ethnic minorities, in the transportation planning process.<sup>597</sup> The report was aimed at providing case studies around the country, and in Wisconsin, for creating innovative strategies to interest disadvantaged persons in attending first meetings and sustaining their interest and keeping them involved in planning. The Wisconsin case study demonstrated how DOT officials conducted a needs assessment study of two heavily used arterials in Madison. Project strategy included community meetings, workshops, neighborhood open houses, and other efforts to involve all stakeholders as a means of addressing the segregation of neighborhoods by major highways. A particularly innovative method included involvement of youth in the identification of pedestrian and bicycle needs.<sup>598</sup>

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## **WYOMING**

## **Statute**

### **Industrial Siting**

In 2004, Wyoming passed a statute creating the Industrial Siting Council.<sup>599</sup> Part of the Industrial Siting Division of the Wyoming Department of Environmental Quality, the Council

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<sup>595</sup> Electronic mail from Carolyn Amegashie, Division of Transportation Infrastructure Development (Feb. 14, 2005).

<sup>596</sup> *Id.*

<sup>597</sup> Wisconsin Dep’t of Transportation, *Environmental Justice in Transportation*, <http://www.dot.wisconsin.gov/library/research/docs/tsrs/tsrenvironmentaljustice.pdf> (last visited Feb. 7, 2006).

<sup>598</sup> *Id.*

<sup>599</sup> WYO. STAT. § 35-12-104 (2004).

“reviews the socio-economic and environmental impacts of industrial facilities before issuing a permit for construction.”<sup>600</sup>

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<sup>600</sup> Wyoming Dep’t of Environmental Quality, *Welcome to Industrial Siting*, <http://deq.state.wy.us/isd/> (last visited Feb. 20, 2006).